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### **Uneven encounters and paradoxical rights: embodiment and difference in sexual orientation rights and activism**

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**UNEVEN ENCOUNTERS AND PARADOXICAL RIGHTS:  
EMBODIMENT AND DIFFERENCE IN SEXUAL  
ORIENTATION RIGHTS AND ACTIVISM**

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**A thesis submitted in partial fulfilment of the requirements of the  
University of Westminster for the degree of Doctor of Philosophy**

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## **Abstract**

My thesis takes the intersection of sexual orientation and human rights and the increased tendency towards the expression of the concerns of sexual minorities in rights based terminology in international law as a Deleuzian 'problem' to be explored and unpicked. Sexual orientation is a singular expression of a complex multifaceted virtuality, yet the term - understood as a static and relatively unchanging denotation of a particular identity and mode of action - holds increasing purchase as a human rights issue. I explore the way in which rights shape the expression of sexuality within institutional and activist practices in international arenas and suggest that the complex and contested encounter between sexuality and human rights in international law exposes the problems, limits and temporality of both. By taking seriously the problems inherent to the encounters between sexuality and rights, as they are expressed in different material circumstances, we can explore sexuality as a mutliplicitous and changing flux and rights as a dual sided paradox, acting simultaneously machines of territorialisation and machines of deteritorialisation. Thus, I suggest that in their engagement with questions of 'sexual orientation', rights act as both modes of control, restriction and exclusion and as modes of communication and connection, challenge and escape, depending upon the particular circumstances within which they are expressed. As such, I attempt to engage with the embeddedness of 'sexuality' within particular material contexts and through this engagement, explore different potentialities that are implicated within divergent enactments of rights and sexuality in order to critique a mode of action that remains fixed upon abstract discussion of ossified 'sexualities' and transcendental rights. Furthermore, my aim is to approach the encounter not only as a means of critique but also as a moment of uncertainty and a site of productive engagement, vitality and becoming. Thus, the key question to be asked of the encounter between sexual orientation and rights is not one of which rights have been violated or of how a perceived violation can be expressed in relation to an already conceived and fixed discourse of rights, but instead, which material circumstances have facilitated the expression of injustice suffered by a sexual minority as a rights violation and in expressing the violation in this way, which possibilities, problematics and discourses are activated, and which others are ignored.

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**I declare that all material contained in this thesis is my own work**



## Abbreviations

ANC	African National Congress
CHE	Campaign For Homosexual Equality
DADT	Don't Ask, Don't Tell
ECtHR	European Court of Human Rights
GASA	Gay Association of South Africa
GLF	Gay Liberation Front
ICCPR	International Convention on Civil and Political Rights
ILGA	International Gay and Lesbian Association
IGLHRC	International Gay and Lesbian Human Rights Commission
LGBT	Lesbian, Gay, Bisexual and Transgender
LGBTQQI	Lesbian, Gay, Bisexual, Transgender, Queer, Questioning, Intersex
MSM	Men who have sex with men
OLGA	Organisation of Lesbian and Gay Activists
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNGA	United Nations General Assembly
UNHRC	United Nations Human Rights Council

## Chapter One - Introduction

### Introduction: Situating Sexualities

In December 2011, US Secretary of State Hillary Clinton used her International Human Rights Day speech at the United Nations to call for the promotion and protection of the human rights of Lesbian, Gay, Bisexual and Transgender (LGBT) persons and affirm that 'gay rights are human rights and human rights are gay rights.'<sup>1</sup> Acknowledging that her own country's record on gay rights was far from perfect, she reiterated a US commitment to the protection of LGBT individuals and LGBT rights. While noteworthy in itself, Clinton's speech can also be viewed as only the latest in a series of engagements with issues relating to sexual orientation and human rights, both at the UN and elsewhere. Over the past 15 years, for example, LGBT progress at the UN has seen the UN Human Rights Committee uphold the privacy rights of a Tasmanian gay rights campaigner<sup>2</sup> and the controversial reading and passage through the General Assembly of a statement affirming the rights of all individuals to non-discrimination regardless of sexual orientation or gender identity.<sup>3</sup> More recently, in 2011, the Human Rights Council adopted a resolution condemning violence and discrimination on the grounds of sexual orientation or gender identity.<sup>4</sup> The increasing visibility of sexual orientation issues at the UN is reflected in state based arenas: to take just some examples of this, we might point to the way in which, Clinton's speech notwithstanding, US politicians and activists have fought fierce battles over issues of gay marriage and the repeal of the US military's Don't Ask, Don't Tell (DADT) ban on openly gay US service personnel.<sup>5</sup> In February 2012, amid protests, controversy and arrests, lawmakers in St Petersburg debated and eventually passed a bill criminalising 'gay propaganda', defined as any public act exhibiting or supporting homosexuality that might be seen by a minor.<sup>6</sup> In Uganda, in the same month, a controversial private members' bill proposing the death penalty for 'aggravated homosexuality' was re-tabled in Parliament.<sup>7</sup> In the UK in 2011, Prime Minister David Cameron used his address at the Conservative Party Conference to inform

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<sup>1</sup> Clinton, Hillary Rodham 'Remarks in Recognition of International Human Rights Day' [www.state.gov/secretary/rm/2011/12/178368.htm](http://www.state.gov/secretary/rm/2011/12/178368.htm) accessed 7/03/12

<sup>2</sup> UN Human Rights Committee Toonen V. Australia, Communication No. 488/1992 UN Doc. CCPR/C/50/D/488/1992 (1994)

<sup>3</sup> UN General Assembly, Sixty-third session, Agenda item 64(b). Letter dated 18 Dec 2008 from the Permanent Representatives of Argentina, Brazil, Croatia, France, Gabon, Japan, the Netherlands and Norway to the United Nations addressed to the President of the General Assembly. UN Doc. A/63/635 (2008),

<sup>4</sup> UN General Assembly Human Rights Council 17<sup>th</sup> Session 'Human rights, sexual orientation and gender identity' UN Doc. A/HRC/RES/17/19 (2011)

<sup>5</sup> Eg BBC 'US Court Rules Ban on Gay Marriage is Unconstitutional' <http://www.bbc.co.uk/news/world-us-canada-16940534>, Human Rights Watch 'US: Obama repeals Don't Ask, Don't Tell' <http://www.hrw.org/news/2010/12/21/us-congress-repeals-don-t-ask-don-t-tell> accessed 7/3/12

<sup>6</sup> Human Rights Watch 'Russia: Enshrining Homophobia' <http://www.hrw.org/news/2012/02/15/russia-enshrining-homophobia> accessed 7/3/12 'Russia: Is wearing a pink triangle a crime' <http://www.hrw.org/news/2012/04/26/russia-wearing-pink-triangle-crime> accessed 1/5/12

<sup>7</sup> Amnesty International Urgent Action: 17 Feb 2012 'Anti Homosexuality Bill is Re-tabled in Uganda' UA: 40/12 Index: AFR 59/001/2012 Uganda. Accessed 7/03/12

delegates that 'I don't support gay marriage despite being a Conservative, I support gay marriage because I'm a Conservative'.<sup>8</sup> Yet in early 2012, a minister from Cameron's own government defended the rights of religious schools to distribute materials critical of homosexuality to their students.<sup>9</sup>

The examples above are only a small selection of recent incidents. All occurred or are occurring in different locations, as a result of wildly different pressures and social conditions. Some are clearly issues of rights; others speak to other areas of law and citizenship but find clear resonance or implication in questions of rights demands or constraints. Furthermore, although the scenarios sketched above do differ greatly, it is also possible to trace connections between them – the question, meaning and location of sexual orientation, sexuality, or non-heteronormativity resonates through each set of circumstances – although the mode through which these connections are made and questions are formulated, differs from location to location. More broadly this relates to the problem of how we might link or group issues that relate to sexual orientation. As such, while we might acknowledge that connections can be drawn, subsuming all of the issues above into a single grouping, or, as some critics have done, ascribing them to the work of a global 'gay international', appears reductive and overly simplistic. There is no doubt that global gay rights groups exist (as do international groupings that oppose gay rights); there is also no doubt that we can draw connections between the incidents outlined above. However, it is difficult to reduce these connections to a one-sided identity or representation of an individual, group, community or lifestyle.

Thus, a key concern of my thesis is an exploration of the fragmented connections which inhere in issues pertaining to sexuality, but are immensely difficult to enunciate or express with any precision. Taking the 'international' as a sphere of analysis means that both the frame of reference and also the range of behaviours, attitudes and actions under consideration, are hugely diverse and thus difficult to analyse from a coherent, academic perspective. As the examples above suggest, it is very difficult to say what sexuality *is* or what position it occupies within a legal framework at any given instance and any definition is guaranteed to vary from place to place. Yet to simply assess sexuality or sexual orientation on a state-by-state or community-by-community basis is to miss both the relationships and, significantly, the operations of power that transcend state boundaries. Sexual orientation and human rights is not a matter of *either* the global *or* the local, but the interaction and communication between the two. It is this dynamic that I am interested in interrogating. Most particularly, I am interested

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<sup>8</sup> 'David Cameron's Conservative party conference speech in full'

<http://www.guardian.co.uk/politics/2011/oct/05/david-cameron-conservative-party-speech> accessed 7/3/12

<sup>9</sup> "'Anti gay' book puts Gove at centre of faith school teaching row'

<http://www.guardian.co.uk/education/2012/feb/18/anti-gay-book-gove-row?newsfeed=true> accessed 7/3/12

in how to conceive of this dynamic in positive rather than negative terms: it is possible, for example, to make a link between issues of sexual orientation based on classifications of lack or exclusion – that is non-heterosexuality or non-heteronormative sexual otherness – but I want to question the usefulness of basing either a sense of belonging or a mode of political action and rights demands upon a connection based solely in negativity and lack.<sup>10</sup> Or more succinctly, can a sense of not being part of a heterosexual matrix be enough? Can this formulation capture the complexity of the way in which sexual orientation is currently being addressed in international and local arenas? It would often seem that the relationship between ‘heterosexuality’ and ‘homosexuality’ is more complex than a simple oppositional or exclusionary relationship might allow. Nor is there any particularly clear line that we can draw between behaviour and identity when considering questions of sexuality and sexual orientation: same sex activity does not necessarily make one ‘gay’ or ‘homosexual’, yet, at the same time, there is clearly some link, however problematic, between behaviour and identity.<sup>11</sup>

Furthermore, the use of a heterosexual matrix as a basis for exclusion and thus connection or community is itself flawed. Homosexual and heterosexual are not neutral terms, but are themselves self-reinforcing constructions and the product of a particular era and system of knowledge production in relation to self and society.<sup>12</sup> Moreover, as a technology of production and classification, homo/heterosexuality is unevenly located and embodied – there are situations in which it accurately reflects and describes identities and subjectivities, but equally there are situations and modes of living where it does not. Two key questions follow from this mode of analysis. First, what vectors of knowledge production do we utilise and reinforce by addressing issues of sexual orientation in this way and second, does addressing problems of sexual orientation through questions of knowledge production create any scope for the creating or uncovering of connections that are based in positivity and production rather than negativity, exclusion and lack?

This means that my research question and focus begins not from one specific instance of LGBT rights or activism but from the suggestion of a problematic interconnection and communication between numerous different incidents. The question is one of how to account for interconnection and communication and the power dynamics that operate in relation to this complex connectivity without allowing understandings of the lived experience of sexuality and rights to collapse into homogeneity. I want to suggest instead, that overcoded identity

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<sup>10</sup> Sara Ahmed, *Strange Encounters: Embodied Others in Postcoloniality* (London: Routledge, 2000). P83-90 Simone Bignall, "Desire, Apathy, Activism," in *Deleuze and Political Activism: Supplement to Deleuze Studies Vol 4*, ed. Marcelo Svirsky (Edinburgh: Edinburgh University Press, 2010). p11

<sup>11</sup> Eg Sonia Katyal, "Exporting Identity," *Yale Journal of Law and Feminism* 14 (2002). p153-156

<sup>12</sup> M. Foucault, *The History of Sexuality: Volume 1*, trans. Robert Hurley (London: Penguin 1990).

paradigms or representations of sexual identity are constantly subverted by the lived reality of homosexual, queer, LGBT, (etc.) lives. Thus at issue are the dynamics that shape the distribution of representations, identities and subjectivities within discourses of human rights and sexuality. This means that there are multiple facets to both my research question and my approach to this question. Broadly speaking, however, two main objectives can be identified:

- 1) To map the position of sexual orientation in international human rights law and activism in such a way as to account for connection, communication and resonance without a collapse into unproblematic representations or homogenous 'identities'.
- 2) To use this problematisation of identity and representation to interrogate the operation of rights and human rights law in relation to sexuality in order to more fully illustrate both the productive and the restrictive potentials of the operation of rights in questions of sexuality and sexual orientation.

This requires the problematisation of current iterations of sexuality and identity in international rights discourses. This itself is challenging – sexuality and sexual orientation rights remain very new in international law and there are still relatively few documents or judgments that refer to sexual orientation. Thus, in order to create a fuller picture of the dynamics at play, I assess not just legal documents or institutions but activism pertaining to rights and sexuality and the interaction of both of these spheres in relation to LGBT issues.

This view of sexuality and rights opens a number of pathways for analysis. The first pathway concerns the issue of how we might address questions of sexuality and rights, or more accurately, how we might think about the possibility of connection or community when the issues at hand range from those of violence suffered because of one's sexual orientation (revenge rape, exclusion, torture), to questions concerning the right to marry, employee and partnership benefits, adoption and the right to raise a family. Given the breadth of possible concerns here, there is a question of whether there is an identifiable connection in operation and if so, how we might talk about such connections in relation to issues of power, visibility and invisibility, subalternity, or the asymmetries of power relations between East and West, North and South.

These issues point to a second path of analysis: the examination modes of knowledge production. In particular, I am interested in the Deleuzian argument that language is always prescriptive rather than communicative.<sup>13</sup> As such, we must be aware of what prescriptive effects both the language of LGBT activism, 'sexual orientation', etc. and the language of rights might have. I am suggesting here that the interaction of a vocabulary of sexual orientation and a

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<sup>13</sup> Gilles Deleuze, *Desert Islands and Other Texts 1953-1974* (Semiotext(e), 2004). p286

vocabulary of rights leads to the framing of debates in a particular way, to the mapping of some connections and the obscuring of others. Furthermore, I am interested in the way in which the conjunction of these two vocabularies becomes self-reinforcing – or becomes a demand that we speak a particular language of sexuality and rights in a particular way.<sup>14</sup>

This problem can be understood as an issue of which constructions and narratives of sexual rights hold purchase in different scenarios, what connections we can make between these scenarios, why this is the case and what the impact of the habitual recognition and repetition of these scenarios might be. Framing the issue in this way also allows an exploration of wider questions of the coherence (or otherwise) of our conceptualisations of selfhood, subjectivity and rights. By reacting attentively to the problems that arise when we try to use rights language to enunciate questions of sexuality or sexual orientation, we begin to expose gaps or blind spots in the foundations of our rights discourses.

This act of uncovering operates in two related dimensions. The first is practical – the movement and operation of rights in relation to what is crudely termed ‘identity’. These are the claims for rights made on the basis of one’s gender, ethnicity, religion or indeed, sexual orientation. This movement, however, has helped facilitate an increasingly stark enunciation of binary categories through which rights concerns are perceived (rights/culture, Western/non-Western etc.). These binarisms become both restrictive and a habitual narrative of political action. They operate as devices or machines that allow an increasingly fixed and inflexible framework for debate.

These practical problems speak immediately to a second, more theoretical dimension – namely the question of how we might shift the terms of the political debate or dualistic narratives that are currently in operation. This issue is therefore one of attempting to unpick and think through binaries in order to identify other or new modes of action, connection and enunciation. Thus the practical requires a theoretical rearrangement, but this theoretical arrangement must be played out or explored through the practical issues of the day: the question is not just one of the violation of the rights of LGBT individuals, nor is it simply that of the theoretical foundations and groundings of rights, instead, it concerns the interaction of the two in a dynamic of mutual resonance, problematisation and change.

### **Theoretical issues: embodiment and difference**

The theoretical underpinning of my thesis draws from feminist, postcolonial and Deleuzian thought. My aim in engaging with these theoretical standpoints is to explore critiques of

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<sup>14</sup> Hakan Seckinelgin, "Global Activism and Sexualities in the Time of Hiv/Aids," *Contemporary Politics* 15, no. 1 (2009). P104

singular, centralised hierarchical modes of power and organisation and the arguments of those who have demanded either inclusion with, or the deconstruction of a politics that takes as its foundation the heterosexual white man as the subject and bearer of rights. In exploring these critiques, I also seek to draw on Deleuzian themes that begin from an ontology of difference rather than one of sameness and identity.

In using this particular theoretical outlook, I attempt to shift the frame of reference for how the problems that we encounter in the sphere of sexuality and rights are articulated. Deleuze suggests that problems insist and persist in their solutions and that the way in which we articulate and comprehend problems impacts upon the solutions that are available to us.<sup>15</sup> This means that a key starting point must be the avoidance of 'false problems' that are badly articulated and represented and thus offer false or unhelpful resolutions.<sup>16</sup> It is for this reason that I want to suggest that it is important to take seriously the critiques of rights regimes and their centralised, exclusive structures that have been made in particular by feminist and postcolonial writers. Wendy Brown notes for example, that '[j]ust when polite liberal (not to mention correct leftist) discourse ceased speaking of us as dykes, faggots, coloured girls, or natives, we began speaking of ourselves this way.'<sup>17</sup> What interests me is not just these demands for inclusion made through references to particular identities, but the way in which the very fact of the need for these demands exposes particular problematics, blind spots and fractures within rights regimes. I am interested in the way in which critiques of rights, and responses to these critiques (the increased demands for rights on the basis of 'identity' for example) facilitate new connections, the articulation of new problems and the exploration of different expressions of subjectivity and self. As such, I do not only seek to address particular questions and problematics posed by the intersection of rights and sexuality, but also to contextualise and emplace these problematics. In doing so, I attempt to explore why and how they have come to be understood and articulated, and what further articulations and encounters are brought to light by the continuing enunciation of questions of sexuality and rights. Thus, while the starting point for my analysis is sexual orientation and human rights in international legal systems, I am also interested in how connections, problems and enunciations branch out in a rhizomorphous construction around sexuality and rights as they are currently assembled and articulated.

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<sup>15</sup> Gilles Deleuze, *Difference and Repetition*, trans. P Patton (London: Continuum, 2011). p203

<sup>16</sup> Dorothea Olkowski, *Gilles Deleuze and the Ruin of Representation* (Berkeley: University of California Press, 1999). p91

<sup>17</sup> Wendy Brown, *States of Injury: Power and Freedom in Late Modernity* (New Jersey: Princeton University Press, 1995). p53

My second concern in adopting this theoretical outlook, is to explore the virtual and actual connections at play in the intersection of sexuality and rights. For Deleuze, both the virtual and actual are real, but the virtual exists as incorporeal events, intensities and singularities that can only be known through their actualisation in material circumstances.<sup>18</sup> As such I regard sexuality as a flow rather than a fixed or fundamental quality: sexuality is the expression of particular tendencies; sexual identities and norms are counter-actualisations that occur in relation to events, material circumstances and problems. Thus the movement of sexuality in relation to different strata and social conditions results in its multiplicitous expression through individuals, social machines and modes of living.

This means that of central relevance to my research is the way in which actual, material conditions – and the individuals who inhabit these material conditions – interact with larger virtual movements. I would suggest that we cannot fully understand either virtual movement or actual conditions without each other and thus of vital importance is the interaction and the connectives that are in operation between the two. Colebrook argues that:

‘What Deleuze is doing with theory is demanding that we do not accept *any* structure without interrogating its real emergence. There can only be concepts, laws and societies because of a virtual potentiality that allows for the creation of actual instances. This virtual domain of Ideas is not some abstract and undifferentiated, or unknowable beyond that we can only approach negatively and critically. For Deleuze, a strong theory of the virtual allows us to take a given positive phenomenon, such as law, and look at its actual and historical genesis *and* then look at its potentiality.’<sup>19</sup>

This means, for example, that actual problems of sexuality – or more accurately, actual problems that are caused by the interaction and expression of sexual orientation and human rights – must be understood through an interrogation of wider problematics of how we understand, conceptualise and articulate both sexuality and rights. At base is the question of what rights are, and can be, capable of, what connections they make, which events they can precipitate or facilitate. Actual occurrences expose theoretical problematics and aporias in the history and foundation of rights, which can (and should) be addressed through a movement into the virtual domain, and through this virtuality we can return to the original problematic posed by the actual, material occurrence. Furthermore, we must be aware of why the interaction of rights and sexuality/sexual orientation brings specific concerns and problems to the fore – why some

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<sup>18</sup> Constantin V. Boundas, "Virtual/Virtuality," in *The Deleuze Dictionary: Revised Edition*, ed. Adrian Parr (Edinburgh: Edinburgh University Press, 2010). p300

<sup>19</sup> Claire Colebrook, "Legal Theory after Deleuze," in *Deleuze and Law: Forensic Futures*, ed. Rosi Braidotti, Claire Colebrook, and Patrick Hanafin (Basingstoke: Palgrave Macmillan, 2009).



factors, connections and identities are so important, while others are less so. Thus, I am interested in interrogating which power structures are in operation at particular places and times, and how these structures make some issues so visible and articulable while masking or dismissing others.

Following this practice of addressing the interplay between material and theoretical or actual and virtual, I have attempted to analyse rights themselves as complex constructions of material effects and conceptual reordering. I take the view that rights themselves are not fixed, unchanging or transcendental but are instead double-sided and sometimes paradoxical. Rights, I suggest, might profitably be thought of as Deleuzian 'machines'. For Deleuze and Guattari, machines can be viewed as 'keys' that permit entry into or understanding of particular assemblages. Mark Halsey notes that:

'Just as there are different kinds of keys there are also different kinds of machines – some permit entry only (machines of axiomization), some permit one to do things to the room or assemblage once within it (machines of relative deterritorialization), and some permit the space entered to be changed beyond all recognition or to become part of other rooms, worlds, problematics, and so forth (machines of absolute deterritorialization). As Guattari writes, "Machines arrange and connect flows".<sup>20</sup>

Thus, a reading of rights is also a reading of particular organisations and disorganisations of the flow of discourse, matter and power within a particular arena. In this way sexuality can be read as a changing flow or a moving point that interacts with rights-based machines: the problems caused by the interaction of the two create conditions for a fuller exploration of the current organisation and underpinning of our rights regimes. In this way we might begin to question what this means for rights themselves, for sexuality and for those who work in or are impacted by the field of sexuality and rights. I am interested in what the problematic encounter between sexuality and rights exposes and the way that we can open up and explore the connections and dynamics at play in the encounter.

### **Questions of location and perception in the context of international frameworks and multiple sexualities**

It is evident that the focus here is very wide – and the problems of this and particularly of approaching issues of the 'international' in relation to sexuality are discussed further as part of the methodology. However, it bears highlighting here that in adopting this approach, I cannot possibly hope to cover all of the diverse forms through which 'sexual orientation' might find

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<sup>20</sup> Mark Halsey, "Deleuze and *Deliverance*: Body, Wildness, Ethics" in *Deleuze/Guattari and Ecology*, ed. B Herzogenrath (London: Palgrave Macmillan, 2008). p233.

expression as an issue. Instead I have tried to focus on certain key events, the themes and intensities that are brought out in the unfolding of these events and the particular systems of knowledge production that are implicated in the way that events are approached and understood.

It should also be made clear that this stance is not and cannot be objective – my own particular position and outlook is implicated in the way in which I approach the issues at hand. I am not above or outside the questions of sexuality or the theorisation of rights that I am engaging with and the fact that I am a white, female, queer researcher based at a UK university has particular implications for the approach that I take, the questions that I ask and the way in which I frame the wider context in which the events that I analyse take place. Thus, my own location and identity has impacted on the way I am able to approach issues – the effect of which is discussed in the methodology and in Chapter Four in particular. My own position impacts both positively and negatively on the research that I am able to do and the positions that I am able to take. The most significant effect of this is my interest in and focus on the conditions of production of identity and knowledge from the perspective of a feminist ‘politics of location’ in which the interrogation of the familiar and axiomatic becomes the first step in approaching difference. My approach is one that simultaneously looks for and questions the basis of common themes, frames of reference and connections between and within questions of sexuality and rights and uses these connections to explore how we locate, make use of, and theorise human rights.

This approach necessarily involves some exclusions – I am exploring particular connections and particular flows at the expense of others. This presents both practical and methodological issues. Most important is the argument that a simple ‘listing’ of all possible sexual practices or identities is neither possible nor useful in the context of my research. I am instead working from an acknowledgement that the vast diversity of sexuality can be actualised in numerous different ways at numerous different times. Thus, I am foregrounding not identity nor even diverse identities but pre-individual singularities or themes that are actualised, played or simply lived in numerous different forms and combinations dependent upon spatial and temporal conditions. A simple recording of different static and self-contained identities or practices is insufficient, as my concern is with how a system of rights, predicated upon identity, shapes, interacts and comes into conflict with the material circumstances of sexuality and sexual orientation as a lived experience which resists classification within a coherent or homogenous framework of identity. From this point of conflict, I am interested in exploring the flows and structures of power, debates and narratives that are activated in response to these complexities. My particular location and outlook shapes the way I access and interrogate these themes. However, this is done within the framework of a politics of location or of becoming ‘answerable

for what we learn to see.’<sup>21</sup> Thus, rather than making a claim to objectivity - which would likely involve either taking a view that was so wide and removed from the materialities and practicalities of social and actual life as to be relatively useless, or alternatively taking an approach that focuses more narrowly on ‘black letter’ or legalistic expressions of rights and sexuality, at the expense of an exploration of the connections between rights regimes and social machines - I am making particular selections in an attempt to access the operation, framing and problematics of rights and sexual orientation.

## **Chapter Outlines**

With these conceptualisations in mind, we can map the shape of the thesis. Chapter Two is my methodology, in which I develop the ‘problem’ of sexual orientation and rights, connectivity and difference and begin to interrogate some of the structures in international human rights law that relate to and shape how sexual orientation is generally viewed.

Chapter Three addresses questions of international human rights through an assessment of what international documents and judgments pertaining to sexuality currently exist. In particular I analyse the 1994 Human Rights Committee judgment *Toonen v Australia* and the 2008 General Assembly statement calling for an end to discrimination on the grounds of sexual orientation and gender identity. The aim here is not just to assess what steps have been taken, but to contextualise and problematise how these changes have reverberated through multiple different series and structures in various different locations with both positive and negative effects. The focus therefore is on the way in which rights can work to striate, classify, codify or reinforce particular institutional and organisational structures and alliances – even when they have been introduced with the intention of helping or furthering LGBT causes. At issue is the problem of power, classification and semantics in relation to human rights and sexual orientation.

However, to assess international human rights law or institutions alone misses an important vector of action in relation to human rights and sexuality. This is why Chapter Four broadly engages with the Iranian execution of minors for sexual crimes and the context of debates and activism that have taken place in response to these executions. The chapter addresses questions of nomenclature and representation in relation to sexual identity, particularly as a result of activist practices and suggests that a lack of codified sexual rights documentation does not prevent the use of rights as a device of stratification, coding and control in a self-reinforcing dynamic of naming, representation and activism. I am interested in interrogating this dynamic in order to try to explore questions of visibility, silence and unsayability in activism – to explore

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<sup>21</sup> Donna J. Haraway, *Simians, Cyborgs and Women: The Reinvention of Nature* (London: Routledge, 1991).

the way in which the organisation of action around an identity-bearing subject is continually interrupted and problematised by the way in which the material body of the subject is embedded within a lived particularity and enmeshed within a wider flow of discourse, power and control that extends the terms of debate beyond and around a stable, nameable subjectivity into questions of action, inaction and becoming. Of particular concern are the problems that a misrecognition of this dynamic might cause.

While Chapter Four focuses primarily on the 'organisational' problems of misrecognition and misrepresentation, Chapter Five begins with the theoretical problems that that might also arise – particularly from the idea that misrepresentation can lead to the positing of 'false problems' and incoherent solutions. I use Deleuzian conceptions of event and of the three syntheses of time to consider how we might respond to problematics of sexuality and rights as encounters and to suggest that rights can be viewed as a virtual memory that is actualised in response to the encounter. This approach takes the view that an understanding of rights as either a subsumptive or transcendental regime is both distancing and depoliticising. Rights are instead always a matter of perception and selection. I explore what this might mean in the context of activism, law and judgment.

Chapters 3-5 outline both the theoretical and practical problems of representation, misrepresentation, memory, action and subjectivity in relation to rights and sexual orientation. Chapter Six attempts to address how we might respond to these problems by rethinking rights, sexuality and the relationship between the two from the perspective of an embodied materiality. Thus, the chapter is an exploration of spatiality and materiality in relation to the unevenness of rights. I attempt to highlight how encounters might occur differently depending upon our actual circumstances. In particular I think through the relationship of rights and sexuality across an uneven terrain in relation to questions of resonance and reverberation. The chapter addresses the embodiment of rights and sexuality in two forms – first in the context of the figuration or conceptual personae as a device for de-embedding sexuality from sedimented narratives of subjectivity and identity. This move demands a spatialisation of rights and sexuality as the circulation of both material and virtual multiplicities and leads to a second consideration of sexuality, rights and embodiment – that of how this complication of the encounter between sexuality and rights should be replayed in a counter-actualisation of the event in which the virtual quality of the event is captured in its repetition or playing out as a singular and specific form of action.

This means that my research begins with material (actual) problems and questions, and works through them to the virtual connections that inhere within yet beyond each actualisation. In

doing this, the analysis can then move back to the particularities and materiality of sexual orientation and rights. Thus, in approaching and conceptualising encounters, issues and problems in this way I am attempting to use questions of sexuality and sexual orientation to explore the limits of what the rights discourse is and how we use it: to ask what rights can do, what they should do and what it means when rights fail to fully comprehend the demands made of them by LGBT activism.

## Chapter Two – Methodology

### Introduction: frames and problematics

A focus on the ‘international’ sphere in relation to sexuality presents various methodological issues. Most pertinent is the difficulty created by the breadth and scope of the frame of reference. Indeed, the idea of the ‘international’ as a sphere of analysis makes it very difficult to say anything that will be of equal or significant relevance in all circumstances, in all areas. This issue of breadth is further complicated by the vast diversity of sexual identities, practices, norms and mores that exist at any one time or place. As such, both the arena and terms of analysis are broad, shifting and transient, and the very notion of what sexuality *is* or could be at any one time or place is subject to both change and controversy depending on the approach or perspective that one takes. In simpler terms, the key question is of how one can study sexuality in international arenas, when it is not always possible to identify what sexuality *is* at any specific time or place.

Yet the existence of various statements and judgments in relation to sexuality or sexual orientation (for example, Toonen v. Australia,<sup>1</sup> the Yogyakarta Principles,<sup>2</sup> the Declaration of Montreal<sup>3</sup>), the presence of both international and regional campaigning groups that specifically address issues of sexuality (ILGA, IGLHRC) and more generally, the presence of sexuality as an issue of contention in media and public discourses, suggests that, difficult as the topic may be to analyse from a structured academic perspective, sexuality is a concern that has emerged (or perhaps re-emerged<sup>4</sup>) as a point of contention in transnational and international arenas, and is one that is increasingly being posited in human rights terms.

Despite this emergence, the problem of breadth and scope remains and must be both acknowledged and accounted for in such a way as to make research possible, practical and of substance. To do this requires some degree of specialisation and selectivity. My thesis therefore focuses on sexuality and human rights, in relation to a key question: how do sexuality and human rights interact in such a way as to become a problem in this way at this time? While this initial framing of my research concerns is broad, my approach to the problematic takes a

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<sup>1</sup> UN Human Rights Committee Toonen V. Australia, Communication No. 488/1992 UN Doc CCPR/C/50/D/488/1992 (1994)

<sup>2</sup> [www.yogyakartaprinciples.org](http://www.yogyakartaprinciples.org) accessed 6/12/2011

<sup>3</sup> [www.declarationofmontreal.org/declaration](http://www.declarationofmontreal.org/declaration) accessed 6/12/2011

<sup>4</sup> I do not want to suggest here that sexuality is an entirely ‘new’ contention in international law. While it is true that ‘sexual orientation rights’ are a very recent addition to international rights discourses, we might point to the role that sexual mores played in the colonising ‘civilisational’ discourse of colonial nations. See eg Alok Gupta, “This Alien Legacy: The Origins of “Sodomy” Laws in British Colonialism,” ed. Human Rights Watch (Human Rights Watch, 2008), Patricia Uberoi, ed. *Social Reform, Sexuality and the State* (New Delhi: Sage Publications 1996). Thus while I am suggesting that the location of sexuality in relation to international human rights law is changing, it would be wrong to suggest that sexuality in some form has been entirely absent in any form from international legal considerations.

specific form. Most significantly, I am using 'problem' in the Deleuzian sense in which problems are not resolvable questions but 'problematic knots to be retied differently'.<sup>5</sup> In essence – what factors, forces, Ideas and singularities have come together to constitute sexuality as a problem in this way and at this time? A second key issue is the fact that the notion of 'sexuality' is itself problematic, shifting and subject to various different meanings and political deployments. In general, I take 'sexual orientation' as it is used in various human rights documents and discourses as a point of departure, but it is clear that such terminology only imperfectly captures the issue at hand. Alternative terminology – such as non-(hetero)normative sexual otherness – could be used instead, but while such phraseology captures the multiplicity of possibilities of sexual being or becoming, it risks being too broad and imprecise and constitutes the focus in negative rather than positive terms. Instead, I want to suggest that my focus is on the emergence of a semi-coherent 'sexual subject' or subjectivity that is increasingly perceptible in human rights terminology and documents, and the intersection of this sexual subject with these more open-ended modes of sexual selfhood.

With this in mind, my approach has necessitated that several issues be referred to only in passing or not at all – religion and sexuality, or HIV/AIDS and sexuality for example, are clearly hugely important topics that are increasingly a matter of human rights law in certain states. However, these issues are not the focus of my thesis – to do justice to these topics would require a great deal more time and research. Similarly, the specifics of particular sexual cultures or sexual practices are not the central concern of my research. Instead, my emphasis is on the conceptual grids that underlie questions of sexuality and international human rights. Analysis of specific sexual cultures, for example through fieldwork, was not essential to the examination of these grids and may even have risked drawing attention away from their centrality by introducing new discourses or vectors of analysis. This does not mean that I am ignoring difference or different expressions and embodiments of sexuality; instead I am attempting to acknowledge the importance of difference and the possibility of multiple and varied sexualities and sexual orientations, while avoiding a frame that selects and contrasts only one or two particular articulations or locations of sexuality. More precisely, my interest is in the factors that aid the framing of sexuality within often hierarchical or binary relationships rather than the particularities of the modes of expression and embodiment that populate these hierarchies. My interest is not in setting up binaries or classifications of particular sexual practices in order to integrate them into a pre-established framework of international human rights norms, which are unavoidably Eurocentric and rooted in particular, usually Western, discourses of the subject. Human rights norms must, by necessity, take a certain view of

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<sup>5</sup> James Williams, *Gilles Deleuze's Logic of Sense: A Critical Introduction and Guide* (Edinburgh: Edinburgh University Press, 2008). p111

subjectivity and selfhood. As my research progressed, I became increasingly wary of pursuing a method that might unconsciously posit different modes of sexual selfhood in a hierarchical relationship with always already constituted sexual subjectivities and even more wary of implicitly creating a frame which attached a judgement value to certain sexualities based on their distance from human rights norms. Instead, my focus is international human rights norms *themselves* and the way in which discourses of sexuality and sexual identity are causing them to shift and resonate; most particularly I am interested in the way in which the resonance of sexuality through human rights norms draws attention to the problematic gaps, blind spots and silences within the frame of international human rights law. This is not to say that sexual being or belonging cannot be considered in terms of their relationship with or distance from human rights or law, but this consideration must be rhizomatic rather than arborescent. Furthermore, this consideration of the intersection of human rights and sexuality foregrounds the context of the relationship of sexual selfhood with the rational legal subject, and in doing so, exposes the power relations that constitute normativity, sexuality and embodiment in relation to the law. Gear suggests the complexity of embodied, material human lives are often 'lost in translation' once considered through the law's scheme of reason and rational legal subjectivity<sup>6</sup>: I am interested in how this occurs and what the consequences of this loss can be. This is not to argue that research into different sexual cultures or into specific relationships between a sexual culture and human rights is not important or necessary work, it is more an acknowledgement that an analysis of specific singularities of sexuality is not a prerequisite for addressing my central concerns.

Part of the reason for my caution here also relates to my own position within a hierarchy of knowledge production and perhaps also of law. Educated at Cambridge, the LSE and the University of Westminster, I can be seen to represent a particularly Western and privileged tradition of knowledge production.<sup>7</sup> I am also conducting research into an area which has a long colonial history; indeed many national anti-gay laws took their format from legislation first put in place by British colonial forces.<sup>8</sup> This history makes the legacy of colonialism particularly relevant to my research. Of particular concern is Fitzpatrick and Darian Smith's argument that '[i]t is by now close to a truism in the literature of post colonialism, and elsewhere, that European and Western identity is constituted in opposition to an alterity that it has itself constructed.'<sup>9</sup> My aim is to try to avoid reconstructing a binary or dualism of Western/non-

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<sup>6</sup> Anna Gear, "Challenging Corporate 'Humanity': Legal Disembodiment, Embodiment and Human Rights," *Human Rights Law Review* 7, no. 3 (2007). p523-4

<sup>7</sup> For further analysis of this see eg Linda Tuhiwai Smith, *Decolonizing Methodologies* (London: Zed Books, 1999). p58

<sup>8</sup> Alok Gupta, "This Alien Legacy: The Origins of 'Sodomy' Laws in British Colonialism,"

<sup>9</sup> Peter Fitzpatrick and Eve Darian-Smith, "Laws of the Postcolonial: An Insistent Introduction," in *Laws of the Postcolonial*, ed. P Fitzpatrick and E Darian-Smith (University of Michigan Press, 1999). p1



Western sexualities in which the uncategorised 'otherness' of non-Western sexual behaviour can be used to bring both human rights law and Western sexualities into sharper focus. In doing this, I am not disregarding the power dynamics of global North/South interactions, but rather than adopting an approach that takes these divisions as axiomatic, their conditions of production must themselves be brought into clearer focus. I am interested therefore, in attempting to unpick why such dynamics are so often the dominant mode for framing issues of sexuality in international spaces, and what this could mean in relation to questions of human rights and sexual subjectivity. Or, with Narayan, we must attempt to avoid the idea of the 'Third World' as the West's 'mirror': a reflecting pool that gives a Western Narcissus back his own pale reflection.'<sup>10</sup> Her argument here goes on to centre the question of how we engage with suffering – and the role of the 'Third World' as a reflection of Western guilt over power and hegemony that does not truly engage with those who suffer mistreatment and injustice within these contexts, or allow for the voice of those constituted as objects of study or reflection. Her point is that particular narratives of what constitutes a 'Third World subject' or a 'Western subject' can create conditions in which the social realities of those most in need are not always adequately reflected. In essence, what must be centralised is the danger of using 'the other' to bring the issues, questions and problematics of human rights and sexuality into sharper focus. This approach fails to treat 'otherness' on its own terms, viewing it instead as essential, self-contained and eternally posited on one side of an identificatory dualistic structure in which otherness becomes explicable primarily through the viewpoint of its dominant binary pair.

This is not to say that all research done in this way will necessarily fall into the trap of replaying such dualisms – to take such a position would seriously limit the possibilities of research. My intention is to practice a 'politics of location' that begins from my own embeddedness within a particular framework of knowledge production and attempts to problematise that frame. Braidotti refers to this as a practice of 'unveiling the power locations which one inevitably inhabits as the site of one's identity.'<sup>11</sup> This is a profoundly spatialising process that demands a self-emplacement within the cartography of power that we share with others in such a way as to illuminate the limits and locations of our own particular embodiments and understandings of truth, knowledge and power. It is an interactive practice of interrogating and thus distancing the self from the familiar as the first step towards approaching difference. This therefore, is why I take what might seem a circuitous or cautious approach to the topic on hand. My aim is not simply to focus on the unfamiliar in order to emplace it within an already existing binary of familiar/unfamiliar but to attempt to interrogate the conditions that contribute to the

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<sup>10</sup> Uma Narayan, *Dislocating Cultures: Identities, Traditions and Third World Feminism* (London: Routledge, 1997). p141

<sup>11</sup> Rosi Braidotti, *Metamorphoses: Towards a Materialist Theory of Becoming* (Cambridge: Polity Press, 2008).p12

construction of this binary as a mode of being in the world in order to cast light on the particular power structures which 'we', as LGBT individuals, inhabit. Thus the 'familiar' with which I engage is international human rights law, LGBT identities and the politics that follow from them. My interest is in more solidly emplacing these questions of rights and identity in relation to a complex, multifaceted understanding of sexuality. This demands a shift from a simple acceptance and contrasting of 'identities' to their problematisation in the hope of finding modes of connection across difference and to then rethink these questions of identity, connection and difference in relation to structures of international human rights law. I attempt to trace why these particular forces have come to constitute this particular problem in this way and what the effects of this might be. As Kollman and Waites point out:

'The radical anti essentialist understanding of human identity and meaning construction espoused by queer theory and activism allows for a greater diversity of human expression by challenging many universal categories. The problem...is that law, policy and states appear to need identifiable categories to combat discrimination. These categories, while constraining certain moves towards liberation, appear necessary for movement creation and state activism.'<sup>12</sup>

At issue here is the disjunction that exists between a multiplicity or multi-sided mode of sexual being and becoming, and international human rights norms and movements that increasingly acknowledge sexual subjectivity and sexual identity as a (sometimes) legitimate subject position. Thus, while even human rights themselves may be predisposed to view sexuality and subjectivity in terms of a dualism – an either/or in relation to identity, legality and applicability – I look to unpick some of the series that are brought into resonance with each other through the conjunction (or disjunction) of the flux of sexuality and the categories of human rights. By approaching these issues as Deleuzian series, I am attempting to distance myself from analysis according to a logical or foundational definition of the structures of rights and sexuality in circulation, particularly one that rests upon the conscious synthesising subject. For Deleuze, series are not defined primarily as combinations of objects and substances but 'variations independent of objects and not limited to them.'<sup>13</sup> Of central importance is variation and combination, rather than the logical organisation and identification of particular structures within the consciousness of a synthesising subject. This shift allows a focus away from and outside the subject as the organisational focal point or grounding of a set of universal rules. As Williams suggests, for Deleuze, 'series are not defined by logical function or a grammatical definition...We may deduce patterns and structures in them and thereby explain certain

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<sup>12</sup> Kelly Kollman and Matthew Waites, "The Global Politics of Lesbian, Gay, Bisexual and Transgender Human Rights: An Introduction," *Contemporary Politics* 15, no. 1 (2009). p13-14

<sup>13</sup> Williams, *Gilles Deleuze's Logic of Sense: A Critical Introduction and Guide*. p26

conditions under which series appear, but these are secondary to series as something sensed and expressed. Logic and grammar always come after; they follow change and events rather than dictate them.’<sup>14</sup> The focus then, is not upon totalising structures of oppositions, hierarchy or negation, but points of productiveness, connection, mutation and paradox and the changes that these points mark or precipitate. This perspective is an attempt – made with an understanding of the problematics of sexuality mentioned above – to trace why *now*; why has sexual orientation become increasingly pertinent at this time. This is a question of what factors make the problematisation of sexual orientation possible, which factors, identities and names occupy a structuring role, which forces can operate to open up these structures. It is also a question of what framing the issue in this way can mean for the way that we can think about activism in relation to human rights and sexuality.

### **Theoretical Outlines 1: Postcolonial framings of power, knowledge and law**

The considerations outlined above require that particular attention be paid to the theoretical framework through which the issues above are analysed. My framework is in large part a feminist Deleuzian approach; I return to the advantages and implications of this approach later. However, in focusing on international human rights law and norms, I draw in particular on the work of those who have mapped the social relations of struggle and uneven power dynamics upon and through which our global structures of law and power operate.

At issue then, is the context in which thought or knowledge about sexuality and about rights are produced: the tools that we are able to use to frame and enter this particular set of problems. In relation to sociology and social theory, Connell has addressed the question of positing knowledge, or frameworks of knowledge as universal or universally applicable. She notes the way in which claims to the universal will in fact be teleological, imperialist and Eurocentric: that knowledge production is marked by a particular history and power structure that posits ‘the metropole’ as the space in which theory is produced, and ‘the periphery’ – the global South - as simply a source of data, where theories developed elsewhere can be refined and put into play. Connell’s question is thus one of whether there is theorising that originates from the global South. Or:

‘The underlying problem of the social scientific approaches...is their geopolitical logic. They rely exclusively on the metropole for their intellectual tools and assumptions and

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<sup>14</sup> Ibid.

therefore treat the majority world as object. This closes off the possibility of social science working as a shared learning process, a dialogue, at the level of theory'.<sup>15</sup>

For Connell, the dominance of metropolitan theoretical constructions has become a self-fulfilling prophecy. The Eurocentrism that she traces in the history of sociology first obscures the historical and theoretical traditions that existed outside the West and then prevents development, debate and dialogue between and within these traditions, instead assuming the global applicability of theory developed in American and European universities. Her project is to focus on 'Southern Theory' – theory that is both grounded in, and applicable outside dominant Western understandings of subject and self. Linda Tuhiwai Smith makes a similar point in her work *Decolonizing Methodologies* when she critiques the historical processes that have shaped the speaking and archiving of history in such a way as to erode indigenous frames of reference and systems of knowledge, including the ability and right to determine what legitimate knowledge was and is.<sup>16</sup> In essence, and as both Connell and Tuhiwai Smith bring to the fore, much of the way in which we think about rights, subjectivity and selfhood have philosophical and historical origins in a period in which imperialistic conquest and domination of those deemed 'other' was the norm.

Consequently, the rights discourses that are now used to make liberatory claims are deeply implicated in a historical process and power dynamic of dominance and silencing.<sup>17</sup> Mamdani takes this analysis further as he explores the creation of both the colonial subject and the system of colonial rule.<sup>18</sup> His argument is that the colonial subject is a creation of European governmental processes in which administrative functions came to define, standardise and naturalise a particular understanding of what the African 'was'. In doing this Mamdani highlights the Eurocentric nature of discourses through which Africa is often addressed:

'Whatever their differences [between those engaged in debating contemporary Africa's transition to capitalism], both sides agree that African reality has meaning insofar as it can be seen to reflect a particular stage in the development of an earlier history. Inasmuch as it privileges the European historical experience as its touchstone, as the historical expression of the universal, contemporary unilinear evolutionism should concretely and appropriately be

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<sup>15</sup>Raewyn Connell, *Southern Theory* (Polity, 2007). p68

<sup>16</sup> Smith, *Decolonizing Methodologies*. p173

<sup>17</sup> Patton, for example, has highlighted the role of law, if not rights, in deterritorialising indigenous territories and then reterritorialising them as crown land. Paul Patton, *Deleuze and the Political* (Oxon: Routledge, 2000). p124

<sup>18</sup> Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (London: James Currey, 1996).

characterised as Eurocentrism. The central tendency of such a methodological orientation is to lift a phenomenon out of context and process. The result is history by analogy'.<sup>19</sup>

In his analysis of international law, Rajagopal notes a similar process in which dominance becomes governance and the exercise of power becomes systematised and disguised.<sup>20</sup> Rajagopal draws on a notion of governmentality and resistance to highlight the way in which a process of institutionalisation and rationalisation works to bring resistance *within* a particular structure of power. Power, we might suggest, can increasingly be addressed as a biopolitical relation that works through productive incorporation rather than exclusion<sup>21</sup> and thus the system through which subject and self is constructed contains – and indeed perhaps requires – a complementary space for the 'other'. As Braidotti suggests, we may now all be 'in this together', but we differ radically in terms of locations and allocations of power.<sup>22</sup> Notions of self/other, inside/outside are profoundly complicated and intimately related. I would argue that this complexity and relationality is integral to any understanding of sexual subjectivity and international human rights law.

Thus, with Mamdani, we can view the law as operating by analogy and binarisms, in order to facilitate the incorporation of otherness into an already established framework. As Fitzpatrick and Darian Smith note, Western identity was formed in relation and opposition to the rest of the world, however, once formed, this identity grew to dominate and fill all available space as 'universal' identity that postcolonial states and their subjects were both excluded from and exhorted to join.<sup>23</sup> In relation to such 'binary machines' Deleuze and Parnet comment that 'so many dichotomies will be established that there will be enough for everyone to be pinned to the wall, sunk in a hole.'<sup>24</sup>

We should note that this is not the only possible mode of organisation of knowledge – even within the history of Western thought.<sup>25</sup> And indeed, the need (and space) for the existence and construction of decentred knowledges originating from paradigms outside the global North is

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<sup>19</sup> Ibid. (1996) p12

<sup>20</sup> Balakrishnan Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance* (Cambridge: Cambridge University Press, 2003).

<sup>21</sup> Pheng Cheah, "Biopower and the New International Division of Reproductive Labor," in *Can the Subaltern Speak? Reflections on the History of an Idea*, ed. Rosalind C. Morris (Columbia University Press, 2010).

<sup>22</sup> Rosi Braidotti, "Locating Deleuze's Eco-Philosophy between Bio/Zoe-Power and Necro-Politics," in *Deleuze and Law: Forensic Futures*, ed. Rosi Braidotti, Claire Colebrook, and Patrick Hanafin (Basingstoke: Palgrave Macmillan, 2009). p97

<sup>23</sup> Fitzpatrick and Darian-Smith, "Laws of the Postcolonial: An Insistent Introduction."

<sup>24</sup> Gilles Deleuze and Claire Parnet, *Dialogues 2*, trans. Hugh Tomlinson and Barbara Habberjam (London Continuum, 2006).p16

<sup>25</sup> J.P. Singh Uberoi, *The European Modernity: Science, Truth and Method* (Oxford: Oxford University Press, 2002). Although we might also note the way in which Deleuze too talks of a 'secret link' (perhaps a secret history) of philosophers who challenged the rationalist tradition of Western philosophy, see Gilles Deleuze, *Negotiations* (Chichester: Columbia University Press, 1995).p6

and should be a particular concern of critiques of human rights law.<sup>26</sup> But despite these important critiques, the regimes of particular structuring devices, binaries and assemblages persist – even in the face of recent ‘turns’ that foreground their limits. Braidotti, for example points to the relationship between seeing and knowledge and the victory of the seeable as knowledge, that has persisted since Plato.<sup>27</sup> Olkowski develops this point by viewing Plato’s cave as the arena for the structuring of oppositions in which the pure is separated from the impure, authentic from the unauthentic. As a consequence of this separation and classification, claims to truth can be made by analogy and under a principle of identity, and can presumably be enshrined in law.<sup>28</sup> With such background in mind, we can question, for example, the relationship between visibility, ‘coming out’ and declaring oneself, as an LGBT political tactic, and the relationship between these tactics, the law and wider social imaginaries. It is on this level that my analysis takes place and as such, I am interested in not just what has happened but also in the conditions that make ‘what is happening’ a viable form of action.

I have spent some time outlining the dynamics of how law and subjectivity exist as non-neutral constructs in order to suggest that the way in which one addresses issues of sexuality in relation to such discourses is greatly dependent on positionality. Sexuality exists within a complex assemblage, which is impacted upon by power, history, space and place. It is not necessarily an object that can be viewed or addressed, so much as a relationship or a connecting force occupying various disparate series. To paraphrase Sara Ahmed, at issue is the way in which one orients oneself towards issues of sexuality;<sup>29</sup> this orientation will necessarily have something to do with the ground that one occupies and the way in which one chooses to engage with the issue of sexuality and rights – what one particularly seeks to frame or emphasise when faced with the complex multiplicity at hand.

In my own research I approach sexuality through international human rights. In doing so, I view rights as machines or keys, that is, means of structuring, understanding or entering into a particular assemblage. Rights are not fixed and immutable, but are themselves relational and structuring devices. Thus, the problem or paradox under investigation is that of ‘sexuality’ or ‘sexual orientation’ (in the understanding that sexuality will always have another dimension, excess, resonance, line of flight, beyond the frame that I am temporarily setting) and I use human rights to enter and frame my analysis of sexuality. This approach raises two key points – first the fact that my mode of enquiry and approach will impact upon the direction and

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<sup>26</sup> See eg Brewster Kneen, *The Tyranny of Rights* (Ottawa: The Ram's Horn, 2009).

<sup>27</sup> Rosi Braidotti, "Affirming the Affirmative: On Nomadic Affectivity," *Rhizomes* 11/12 (2005).

<sup>28</sup> Dorothea Olkowski, "Body, Knowledge, and Becoming-Woman, Morpho-Logic in Deleuze and Irigaray," in *Deleuze and Feminist Theory*, ed. Claire Colebrook and Ian Buchanan (Edinburgh: Edinburgh University Press, 2000). p99

<sup>29</sup> Sara Ahmed, *Queer Phenomenology: Orientations, Objects, Others* (London: Duke University Press, 2006).

conclusions of my analysis and second, the use of human rights as machines reveals a great deal about human rights themselves – particularly in terms of how rights and sexuality relate to each other, the blind spots and history of the rights discourse and the way in which rights themselves are both subject to, and facilitators of, changing social dynamics. Rights here are therefore not objective ‘givens’, they are neither stable nor universal in the sense of being transcendental or equally applicable in all circumstances or locations. Instead I view rights as situated, ‘immanent’ and instrumental devices of strategy, politics and connectability. This makes rights themselves as much part of the analysis as issues and developments around sexuality and sexual orientation.

## **Theoretical Outlines 2: Deleuzian encounters and events**

The analysis above draws heavily on a variety of postcolonial theorists in order to set the context of the questions asked. Given this reliance on postcolonial thought alongside the wider Deleuzian question of how the issues at hand are constituted at any particular time and place, there is perhaps a question of why my outlook *needs* to draw on feminist Deleuzian thought, particularly given Spivakian,<sup>30</sup> feminist,<sup>31</sup> and postcolonial<sup>32</sup> critiques of Deleuze. With Braidotti, I would argue that my use of Deleuze is perhaps not always the most orthodox, but again with Braidotti, I would suggest that this is perhaps the best way to approach Deleuzian thought.<sup>33</sup> And despite critiques and misgivings, there are certain key advantages to using a Deleuzian framework to structure an analysis of sexual orientation in international law.

To address this point, however, it might first be necessary to more clearly foreground how my approach to sexual orientation rights can be situated within a specifically a Deleuzian understanding of law or a Deleuzian jurisprudence, particularly given Deleuze’s own critique of rights.<sup>34</sup> I would suggest that although critical of rights in their ‘transcendent’ or universal form, legal scholarship and jurisprudence on Deleuze offers significant conceptual and methodological tools for addressing questions of rights and sexuality. Therefore, my own approach is one that draws upon analysis of Deleuze and law, and reads these arguments in relation to the particular problematics presented by LGBT rights discourses. What is at stake here is a jurisprudence characterised by its emphasis on the ‘material bodies of citizens and their interests rather than

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<sup>30</sup> Gayatri Chakravorty Spivak, ""Can the Subaltern Speak?" Revised Edition, from The "History" Chapter of Critique of Postcolonial Reason," in *Can the Subaltern Speak? Reflections on the History of an Idea*, ed. Rosalind C. Morris (Chichester: Columbia University Press, 2010).

<sup>31</sup> Eg Braidotti, *Metamorphoses: Towards a Materialist Theory of Becoming*.p76, Jami Weinstein, "Introduction Part 2," *Deleuze and Gender: Supplement to Deleuze Studies* 2 (2008). p26

<sup>32</sup> J Wuthnow, "Deleuze in the Postcolonial: On Nomads and Indigenous Politics," *Feminist Theory* 3, no. 2 (2002).

<sup>33</sup> Rosi Braidotti, *Metamorphoses: Towards a Materialist Theory of Becoming* (Cambridge: Polity Press, 2008). p87-88 I address this point at more length below.

<sup>34</sup> Gilles Deleuze, *On Human Rights* L'Abécédaire de Gilles Deleuze, avec Claire Parnet, Vidéo Éd. Montparnasse, 1996 at [www.generation-online.org/p/fpdeleuze10.htm](http://www.generation-online.org/p/fpdeleuze10.htm)

the abstract formless subject of law.’<sup>35</sup> This process considers law and legal theory as a ‘differential jurisprudence’<sup>36</sup> focusing not on the abstract subject of law, but the material circumstances through which rights and law are lived.

There are a number of points to be unpicked here. The first is the focus on the material circumstances in which law is lived, or rights are experienced and expressed, rather than an abstract transcendent and always already existing body of rights, to which material circumstances must be subsumed or represented. As such, a Deleuzian approach to jurisprudence (and law, rights and jurisdiction) involves a movement away from the fact that there is law, to an investigation of the manners in which law surrounds and emplaces us in terms of its processes, technologies, expressions, forums etc.<sup>37</sup> This is a process that centres upon ‘situated law’ and a involves focus on the manner in which we are engaged by law. Thus the point is not the totality or the unity of a body of law, its coherence or even a search for singular and legitimate foundations of law or rights, but the material circumstances through which rights are engaged and expressed, the form that their expression takes, the circumstances that allow such expressions and the possibilities and potentialities facilitated by the fact that a rights claim has been made in a particular way in a particular time. Throughout this thesis, I examine a number of different circumstances and forums in which sexual rights claims are made, aiming not to find a coherent or cohesive body of sexual rights, but to examine the circumstances that have activated a language of rights and sexuality and investigate the way in which these rights are expressed and become expressible within a particular jurisdiction at a particular time.

The second point that we might outline here relates to the way in which a Deleuzian jurisprudence demands that close attention be paid to the vital politics of lived bodies and material lives. Mussawir addresses this point when he discusses the ‘dramatization’ of rights, or the ‘masks’ through which law and rights are known and made liveable.<sup>38</sup> The abstract subject, he argues, ‘related to rights in a universalized and abstract way. It is capable simply of “bearing rights” - or indeed capable of bearing any imaginable right - and thus retains only the *potential* of acting.’<sup>39</sup> Instead, he focuses upon the ‘legal person’, with a determinate relation to a particular set of rights, which are lived, known and dramatised. ‘The legal person...has a

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<sup>35</sup> Rosi Braidotti, Claire Colebrook, and Patrick Hanafin, "Introduction: Deleuze and Law - Forensic Futures," in *Deleuze and Law: Forensic Futures*, ed. Rosi Braidotti, Claire Colebrook, and Patrick Hanafin (Basingstoke: Macmillan, 2009). p1

<sup>36</sup> Ibid.

<sup>37</sup> Edward Mussawir, *Jurisdiction in Deleuze: The expression and representation of law*. (Abingdon: Routledge, 2011). p5

<sup>38</sup> Ibid.

<sup>39</sup> Ibid. p24



determinate relation to a set of rights and capacities which it performs.'<sup>40</sup> Immediately then, we can think of rights as active, or as elements that are determined and lived within a particular location - and as such, the question becomes one of which location and which persons. Thus, this framing demands a consideration of the situatedness of the persons through which rights are lived. At issue is the way in which location might determine both the relevance of a set of rights and the singularity of the person within or through which a particular set of rights can be expressed. Of key importance is a process of what we might call a 'spatialisation' of rights, that focuses on how rights connect with different sets of circumstances and individuals rather than on abstract, transcendent universality. It is through this lens that we must ask what rights are capable of and what actions they might facilitate.

The idea that can be drawn from these approaches to Deleuzian jurisprudence is that of the possibility of viewing rights as immanent to those who live them. Thus, we might centralise the process of working through cases, circumstances and encounters in order to 'put...the law into variation.'<sup>41</sup> In this understanding, rights are not static, but moving, lived and subject to processes of re-selection and re-distribution. Rights here act less as an inert monolith or universal body and more as an active process of expression or creation in response to an encounter. My approach throughout this thesis is to focus on particular cases, events or singularities in order to explore the particularities at play - or in order to ask not what LGBT rights are, but what LGBT rights might be capable of as they are enacted in different locations.

This approach centralises questions of judgment and particularity. Mussawir argues that there is no universal value to judgment - it is instead something that must be expressed,<sup>42</sup> or as Lefebvre argues, 'active judgment' is a process that requires the active perception of an encounter, the selection of the relevant elements of that encounter and the creation and expression of jurisprudence in response to what has been perceived and selected.<sup>43</sup> What is key to my analysis of rights and sexuality then, is the idea that there is no universal set of LGBT rights that requires recognition and application, but instead there is a need for an investigation into the particular circumstances, procedures and 'local dramatisations' through which rights are known and lived.<sup>44</sup> This takes us some way from Deleuze's initial critique of empty, abstract rights. In its place, we are left with Mussawir's suggestion that a right is worthless if it does not invent a way of doing something.<sup>45</sup> Thus the focus here is not simply on law's 'representation' of

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<sup>40</sup> Ibid.

<sup>41</sup> Nathan Moore, "Icons of Control: Deleuze, Signs, Law." *International Journal for the Semiotics of Law* 20, (2007). p45

<sup>42</sup> Mussawir, *Jurisdiction in Deleuze: The expression and representation of law* p133

<sup>43</sup> Alexandre Lefebvre, *The Image of Law: Deleuze, Bergson, Spinoza* (Stanford: Stanford University Press 2008).

<sup>44</sup> Mussawir, *Jurisdiction in Deleuze: The expression and representation of law* p27, p33

<sup>45</sup> Ibid. p94

LGBT rights, but on immanent rights and the circumstances through which they are lived or made livable. At stake are the particularities, connections and contradictions in different material conditions. The key question that a Deleuzian jurisprudence leaves us with in relation to LGBT rights is not necessarily one of the content of a right, but relates more to the question of how far rights might be pushed: What do rights make possible? How are rights known? And what will this mean in a particular place and at a particular time?

However, at this point we might also engage with Lefebvre's suggestion that in turning to Deleuze's concept of jurisprudence in order to flesh out a positive account of law, or in our case, a positive account of rights, commentators risk eclipsing those elements of Deleuze's thought that are useful to human rights and the potential for a specifically Deleuzian conception of human rights.<sup>46</sup> Thus, while I emplace myself within a Deleuzian jurisprudence, and as such focus on the question of how rights might be made liveable, and expressed as immanent through a process of active judgment, I am also interested in pushing further than this. The question might be not only 'how are rights dramatised and spatialised?' but what conflicts do rights illustrate and what questions do they open up to creative repetition or virtual movement? Mussawir highlights the abstract nature of subjectivity by drawing attention to the way in which rights are dramatised. At issue is the possibility of the line of flight from such questions – or the potential for creative renewal in the face of an abstract and abstracting subjectivity. Thus, while we might agree with Mussawir that we must be attentive to jurisdiction as the frame for understanding how rights are dramatised, expressed and lived, there is a second element to be unpicked – that of how, within a Deleuzian frame, rights-based responses to questions of sexuality could potentially be creative repetitions and re-formulations (or counter-actualisations) of the problems posed by law, subjectivity, selfhood, desire, sexuality, family, state etc. I am interested in *both* the actual circumstances and the virtual repetitions that populate rights questions, as well as the surface of expression and sense at which they meet. This virtual aspect draws on a Deleuzian theoretical standpoint to posit rights demands as potential encounters that activate not just immediate material questions but also repetitions or counter-actualisations of Ideas of subjectivity, sexuality and justice (this point is addressed further throughout the thesis and most particularly in Chapter Five). With Deleuze, we can address not just the actuality of jurisdiction as it is specifically dramatised, nor simply the virtual movement of Ideas or of justice, but the surface of sense at which the two intersect. I am interested in the role that rights play at this intersection.

Thus, within a framework of Deleuzian jurisprudence, we can begin to more clearly sketch out how elements of Deleuzian thought can be relevant to questions of international LGBT rights.

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<sup>46</sup> Alexandre Lefebvre 'Human Rights in Deleuze and Bergson's Later Philosophy' *Theory and Event* 14, no. 3 (2011)

The most significant point to address here is that of transnationality. I have suggested that the emergence of issues of sexuality and sexual orientation into international human rights discourses makes an analysis of 'the international' as a dimension necessary. Yet at the same time, it is very difficult to take such a wide focus while avoiding exclusionary or Eurocentric arguments. International human rights may theoretically be a domain that is now addressing sexual orientation, but as an area of analysis, it is simply not possible to focus on everything that happens, or on all of the specific variables and singularities that can impact upon different and differing constructions of sexuality and rights. To try to mediate this apparent impasse, I draw on Deleuzian conceptions of encounter and event. Deleuzian events are not simply bodily, material or corporeal shifts, but are incorporeal transformations subsisting over and above the spatio-temporal world.<sup>47</sup> They are 'moments of sense that exceed already constituted concepts but which open the problems that concepts will answer.'<sup>48</sup> As such:

'The event is never simply an occurrence for the mind of a conscious human being, it is rather a set of multiple interactions running through bodies, idea structures (such as languages or moral codes) and virtual structures (such as relations of emotional investment considered in abstraction from the bodies that carry them – changes in the ratios of the intensities of fear and attraction in a new relationship for instance).'<sup>49</sup>

An event is neither a beginning nor an end, but something 'in the middle', it indicates a reorganisation – a new selection or ordering that runs through, communicates and resonates in multiple series perpetuating and continuing as mutual variations. Events are double-sided 'something that runs through a series but is also transformed by it.'<sup>50</sup> An event involves the selection or actualisation of material occurrences, but the other side of this material restructuring is the reordering of sense or of virtuality – a change in intensity of a virtual potentiality or values (sense) that are actualised in the event. This virtual dimension means that every actualisation is haunted by a series of virtual objects that are never fully present, but consist in virtuality or the pure past. Thus, the event intimately connects corporeal and incorporeal, but is not itself material: it is instead the locus and connection of 'ideational singularities'<sup>51</sup>, and is measured or viewed in terms of effects, or resonance through series. In this framework 'sense' is both hugely significant and hugely complicated. It invokes 'thought

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<sup>47</sup> Cliff Stagoll, "Event," in *The Deleuze Dictionary: Revised Edition*, ed. Adrian Parr (Edinburgh: Edinburgh University Press, 2010). p90

<sup>48</sup> Claire Colebrook, "Is Sexual Difference a Problem?," in *Deleuze and Feminist Theory*, ed. Claire Colebrook and Ian Buchanan (Edinburgh: Edinburgh University Press, 2000). p114

<sup>49</sup> Williams, *Gilles Deleuze's Logic of Sense: A Critical Introduction and Guide*.p1

<sup>50</sup> Ibid. p2

<sup>51</sup> Gilles Deleuze, *The Logic of Sense*, ed. Constantin V. Boundas, trans. M. Lester and C. Stivale (London: Continuum, 2004). p64

and thing, concept and object, universal and singular'<sup>52</sup> and significantly, the surface at which these realms meet. It is the capacity for relations and the orientation or map within which thought moves<sup>53</sup>: 'sense is the surface that divides, holds together, and *constitutes* through its synthetic function, leaving nothing outside of sense in either the depths of things nor the heights of Ideas.'<sup>54</sup> This insistence on the importance of sense and thus the movement (but not resemblance) of both the virtual and the actual in the event, means that a mode of connection persists and insists without a primary demand for unity through identity or resemblance. For Deleuze, the series that are selected and ordered in the event coexist, the virtual haunts the actual and in this process the event resonates through all series without demanding a principle of singular identity – each path is implicated in all others. 'An event for Deleuze is therefore any significant change within a process, where the emphasis is on significance and on a limitless extension of this change through all other series, and in principle, through the whole of reality.'<sup>55</sup>

The aim here is to approximate a framework that attempts to unpick both sexual subjectivity as a static entity and the structure that works to constitute sexual subjectivity in this way, yet maintains a degree of connection or communication that does not depend upon identity or resemblance. My approach depends upon a non-unitary embedded subjectivity, formed of moments of movement, stillness and speed on a plane of immanence. Neither subjectivity nor identity is fixed, instead they must be understood as the unfolding of becoming in response to new problems and new encounters. The focus then, is on emerging actualisations and an exploration of the virtual tendencies activated in this process. The problematic, the new and the encounter are central to this process:

'Problems are the order of events – not only because cases of solution emerge like real events, but because the conditions of a problem themselves imply events such as sections, ablations, adjunctions. In this sense, it is correct to represent a double series of events which develop on two planes, echoing without resembling each other: real events on the level of the engendered solutions, and ideal events embedded in the conditions of the problem, like the acts – or, rather the dreams – of the gods who double our history.'<sup>56</sup>

This understanding of events is pertinent as a way of thinking about and through the complexity of developments in relation to sexuality and rights. Events, as the order of the problem, mark

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<sup>52</sup> Nathan Widder, "Thought after Dialectics: Deleuze's Ontology of Sense," *Southern Journal of Philosophy* 31 (2003). p453

<sup>53</sup> Claire Colebrook, *Deleuze: A Guide for the Perplexed* (London: Continuum, 2006). p69

<sup>54</sup> Ibid.

<sup>55</sup> James Williams, "If Not Here, Then Where? On the Location and Individuation of Events in Badiou and Deleuze," *Deleuze Studies* 3, no. 1 (2009).p106

<sup>56</sup> Gilles Deleuze, *Difference and Repetition*, trans. P Patton (London: Continuum, 2011).p237

the thresholds of reordering and transformation; my argument is that the space occupied by sexuality in international law is in a state of transformation and flux. I am interested in tracing the problems that mark this state of flux, and the flow of sexuality that characterises and moves through the structures that are brought into a problematic clarity in this process. We might think of this problematisation through both Deleuze and Foucault – as ‘an adequate description for how a new object, such as sexuality, appears in discourse.’<sup>57</sup> This then, is a question of what can and does become visible and articulable in any particular historical period.<sup>58</sup> By asking what has become visible or articulable, we must question the relations of knowledge-power-self that govern any era and assess what these relations render possible or impossible: ‘What is our light and what is our language, what is our capacity for resistance, today when we can no longer be content to say that the old struggles are no longer worth anything?’<sup>59</sup>

Moreover, while events express the movement of the virtual, the series in which they resonate and the actuality in which the event is expressed are not inert receivers of motivation. Instead series themselves resonate, transform and react to their selection and reordering in the event: it is in the actual that we experience the virtual.<sup>60</sup> We may not be able to predict when or where this flux will lead, but an understanding of event as selection of series allows us to think through the potentials and forces at play and the way in which we might counter-actualise the event in order to be worthy of it. Or as Williams suggests:

‘When citizens resist and modify the political turmoil that envelops them they change its value and themselves. Neither an estuary nor a port are submissive recipients of changes in river flows, they exploit new opportunities and struggle against the silting of their ongoing life-forms, thereby implying different senses and values in the changes in flow.’<sup>61</sup>

In this way, we are not simply subjects of or to events. Events are not of the present – they have already occurred or are yet to come. Thus, in the present, we must become worthy of the event by replaying it as an actor who counter-actualises it in the present by capturing an eternal quality or idea or the infinitive of the event as always there to be replayed differently. We represent the event by actualising it, ‘but in a way that is entirely different from the actualization of the event in the depth of things. Or rather, the actor redoubles this cosmic or physical actualization, in his own way, which is singularly superficial – but because of it more distinct, trenchant and pure. Thus, the actor delimits the original, disengages from it an abstract

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<sup>57</sup> John Marks, *Gilles Deleuze: Vitalism and Multiplicity* (London: Pluto Press, 1998).p114

<sup>58</sup> Gilles Deleuze, *Foucault*, trans. S Hand (London: Continuum, 2010).p42

<sup>59</sup> Ibid. p90

<sup>60</sup> Rodrigo Nunes, "Politics in the Middle: For a Political Interpretation of Dualisms in Deleuze and Guattari," *Deleuze Studies* 4, no. Supplementary Issue: Deleuze and Political Activism (2010). p119

<sup>61</sup> Williams, *Gilles Deleuze's Logic of Sense: A Critical Introduction and Guide*. p3-4

line, and keeps from the event only its contour and its splendour, becoming thereby the actor of one's own events – a *counter-actualization*.<sup>62</sup> This, for Deleuze and Guattari, is the becoming-worthy of the event.<sup>63</sup> Colebrook relates this question of counter-actualisation to questions of queerness, suggesting that 'the queer self might be thought of as a counter-actualisation of the material repetitions that make up man'<sup>64</sup>; a counter-actualisation might involve the repetition of questions of selfhood and desire which draws on the pure past or virtuality to reorder and rethink the singularities, forces and flows that constitute our current organisation of the problem of selfhood and desire in our particular historical, visible and articulable form.<sup>65</sup>

This does not mean that the event resolves or brings the problem to an end, it is more accurate to say that the problematic, determined by its singular points that express its conditions, opens up these singularities and series to their reordering, rethinking and creative renewal which is expressed in and by the event. The event expresses both the productive potential and the uniqueness of the ordering of the forces from which it arose. Significantly, events carry no determinate outcome 'only new possibilities, representing a moment at which new forces might be brought to bear.'<sup>66</sup> Relative to sexuality therefore, my interest is in events in which singularities pertaining to sexuality or sexual orientation are disembedded from their position within a sedimented narrative structure and replayed within an event that resonates through multiple series; or the way in which questions pertaining to sexuality can be repeated in multiple different forms and formulations depending upon the context in which they are encountered. Furthermore, I am interested in the context that surrounds both the successful and unsuccessful replaying of events and what this might mean for the way in which we consider the relationship between rights and sexuality.

The point here is not to conceive of the event in such a way as to prioritise the virtual over the actual or to posit the virtual as the solution to actual problems (the virtual as a realm of ideal unity of being etc). Both virtual and actual are formally but not ontologically distinct sides of the real.<sup>67</sup> Actual and virtual act upon each other reciprocally, virtuality is never experienced in itself but mediated by the actual encounter: in the double-sided event, the actual determines the conditions through which the event reorders and expresses the new. I would suggest therefore that what is required is not a turning away from the actual or an immediate abandonment of the problems of identity (a depoliticisation of identity politics), but instead an approach that

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<sup>62</sup> Deleuze, *The Logic of Sense*. p171

<sup>63</sup> Gilles Deleuze and Félix Guattari, *What Is Philosophy?*, trans. Graham Burchell and Hugh Tomlinson (London: Verso, 2009). p159

<sup>64</sup> Claire Colebrook, "On the Very Possibility of Queer Theory," in *Deleuze and Queer Theory*, ed. Chrysanthi Nigianni and Merl Storr (Edinburgh: Edinburgh University Press, 2009). p20

<sup>65</sup> Ibid.

<sup>66</sup> Stagoll, "Event." p91

<sup>67</sup> Nunes, "Politics in the Middle: For a Political Interpretation of Dualisms in Deleuze and Guattari." p115

permits a fuller engagement with the illusion that lies ‘not in representation itself, but in the hypostasis of the empirical/actual as the totality of Being’<sup>68</sup> and instead allows for a ‘second level of thought that allows us to see the actual as the singular expression of virtual conditions.’<sup>69</sup> The point therefore, is the necessity of viewing the complex multiplicity of sexuality as an expression not of identities, but as the combination and selection of pre-individual tendencies, affects and virtual objects that finds multiple different expressions in multiple different forms. In doing so, we might begin to read the expression of sexuality outside the sedimented narratives (for example, assumptions of ‘unchanging’ traditions, relations or identities, teleologies of gay liberation which hold Western LGBT identities as the natural destiny of organising around gay rights, binaries of culture vs. modernity, North/South) within which it is usually found.

Thus, in response to the question of ‘universals’ or ‘transnational identities’, I am interested not in a simple cumulative listing of all sexual practices, expressions or identities as they currently stand. Instead, I explore the context of these multiple and multiplicitous expressions of sexuality, the encounters and problems that provoke the movement of the virtual resonating through series and returning in new actualisations and expressions of virtual objects. For Deleuze, heterogeneous terms or singularities constitute series through which the event runs, selects and transforms. These singularities are pre-individual and pre-identitarian, it is only through selection and limitation of series in static genesis that identities emerge. Any name, identity or existence exists, yet recalls the other potentials or singularities not selected or actualised: ‘every idea, figure, proper name or event is strangely doubled, at once evidence of an expression of life and yet, in its very formation also a path taken (an actualisation) at the expense of other potentials.’<sup>70</sup> The actor counter-actualises the infinite nature of the event in the singular particular. Thus, a Deleuzian theoretical framework allows us to both acknowledge yet not be limited by a key problem faced by those who undertake research into sexuality – how to explain or account for simultaneous connectedness and difference in communities of sexual otherness.

It is with these clarifications that we might return to questions of human rights and sexuality. I do this by attempting to situate actual problems and then think through the virtual movements in operation. I have suggested that questions of human rights and sexual orientation currently tend towards either/or binarisms (either universalism or relativism, either straight or gay, either Western or true to one’s traditional culture) that too often end in impasse. The framework outlined briefly here and elaborated throughout the thesis instead frames the issues

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<sup>68</sup> Ibid. p115

<sup>69</sup> Ibid. p115

<sup>70</sup> Claire Colebrook, *Deleuze and the Meaning of Life* (London: Continuum, 2010). p8

in terms of and/or – the addition, connection and disjunction of multiplicitous difference, not restricted by prior conceptualisations of identity or representation. The key question of my thesis is an investigation of the points where this conceptualisation of sexuality can connect profitably with pre-existing conceptualisations of rights.

Thus the use of a Deleuzian framework is a deliberate attempt to engage with some of the dualisms that seem to characterise debates around human rights and sexuality. The problem identified by much work in this area seems to be that the way in which the issues are currently conceptualised requires firm and unchanging ‘identities’ to cohere around in order to make political demands. However, such universals quickly become flattening or restrictive rather than simply platforms by which groups are able to put forward a political agenda. A framework that puts difference before identity and pre-individual singularities before individual subjects allows a degree of flexibility in relation to these issues as it demands the comprehension of both pre-individual trends, the wider narratives and political conditions in which these trends are situated and perhaps most significantly, the foregrounding of movement in which identity exists only as a temporary stabilisation and selection of virtual and material objects. In this way, identity is not fixed or transcendent, but is an expression, to a greater or lesser degree of intensity, or of particular tendencies and flows. In this way Deleuze and Guattari argue that a state of affairs is inseparable from the virtual, but the event goes beyond actualisation. ‘It is necessary to go back up to the event that gives its virtual consistency to the concept, just as it is necessary to come down to the actual state of affairs that provides the function with its references.’<sup>71</sup> As Colebrook suggests:

‘At the level of *sense* for example, it is possible for one and the same event – let us not say the same person – to affirm life, to be pro-choice, pro-euthanasia, opposed to biopolitical management, in favour of the rights of indigenous peoples, critical of the very discourse of rights, be actively advocating gay and lesbian awareness and tolerance, be sceptical of the culture of sexual identity...and so on.’<sup>72</sup>

What Colebrook’s argument seems to affirm here is the space to address a-centred or multi-centred capacities for knowledge and action. At the same time however, the disjunction and resonance of series and their connection in the event allow for, if not a unity, at least a framework – or a multiplicity that does not collapse into incoherence. The way in which the actual is expressed allows for the possibility of disjuncture or even conflict. This is not then a question of sense operating unproblematically as a unifying force – it is instead a movement away from static sedimentations of identity in order to recognise that the counter-actualisation

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<sup>71</sup> Deleuze and Guattari, *What Is Philosophy?* p159

<sup>72</sup> Colebrook, *Deleuze and the Meaning of Life* p89



of sense is determined by the specifics of the encounter in which a 'theme' is repeated or replayed anew. Thus, a lack of resemblance in the actual does not necessarily signify a lack of potential for resonance at the level of sense or in the event which resonates and therefore communicates through a multiplicity of distinct series. The point is to allow for the co-existence and resonance of multiple series and expressions of sexuality, multiple actualisations that can communicate without a demand for linear progression according to an identifiable history or a singular narrative of law and activism. This requires the existence of expressions that can paradoxically move in two directions at once, or the acknowledgement of the possibility that questions or expressions of sexuality can return in multiple different repetitions. The advantage of this approach then, is its potential to hold and maintain several elements in tension with each other, without requiring their synthesis or assimilation into one particular identity, idea or One that acts as a transcendent or unificatory force, despite the way in which dominant paradigms of law and rights might prefer that this be the case. This is therefore, an attempt to resist the temptation of a totalising or universalising approach, but maintain a theoretical mode of analysis that offers some, if not total, coherence and connection.

This does not mean that there are no dualisms or binaries in Deleuze's and Deleuze and Guattari's framework – indeed, they acknowledge dualisms as 'the furniture that we are forever rearranging.'<sup>73</sup> The critique remains however - stressed most forcefully by Badiou - that all dualisms in Deleuze and Guattari devolve on the pair virtual/actual in which the virtual, as the transcendent, is prioritised as the movement of the extra-worldly power of the One.<sup>74</sup> One response to this critique – and the approach that I am attempting to take – is to suggest that rather than prioritising virtual movements, it is necessary to view virtual and actual as formal but not ontologically separate constituents of the real and to avoid the a view of the transcendent virtual as a prior and motivating force. Thus, Nunes summarises the relationship between actual and virtual by commenting that '[t]he event of an actual encounter between two bodies, being determined by mechanical causality, cannot create the new itself; but it determines new relations among virtual conditions, effecting a virtual Event that produces a new actualisation.'<sup>75</sup> At work here is neither the operation of singular phenomena in linear historical progression, nor the unmediated operation of virtual relations, but the resonance of the two as interacting but not identical multiplicities.

However, both the relationship of the virtual and actual and the critiques that extend from an analysis of this relationship have important political ramifications that should be unpicked in

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<sup>73</sup> Gilles Deleuze and Félix Guattari, *A Thousand Plateaus*, trans. B Massumi (London: Continuum, 2004). p22

<sup>74</sup> Alain Badiou, *Deleuze: The Clamor of Being*, trans. Louise Burchill (Minneapolis: University of Minnesota Press, 2000).

<sup>75</sup> Nunes, "Politics in the Middle: For a Political Interpretation of Dualisms in Deleuze and Guattari." p119

relation to the problematic of human rights and sexual orientation. I have already highlighted Nunes' critique of an approach to dualisms that is situated purely in the actual or the 'hypostasis' of identity. I would suggest that this hypostasis can be seen to characterise an approach to sexuality and rights that sees them both as always already existing and totalising, that leads most often to impasse or deadlock in international legal and political arenas. By failing to emplace the frameworks through which we constitute our issues of sexuality within both a temporal and spatial dynamic, binarisms (such as North/South, straight/gay universal/relative) are reinforced. It is this dynamic which seems to speak to a Deleuzian critique of dualisms or more accurately to what Deleuze views as the 'distortion of the dialectic'<sup>76</sup>: the image of thought that restricts and restrains an affirmative, dialectical approach to the problems that we encounter and instead substitutes it for one of abstract or transcendent universals based in coherent identities which can be defined through their negation. The critique here is of an identification that is based both in actual hypostasis and negative oppositions posited within an equivocal framework in which each side of a binary is rendered comparable under an overarching and explicatory frame of reference.

We might argue then, that what Deleuze seems to oppose is the opposition of unitary identity and its negation. He argues in *Difference and Repetition* that '[r]evolution never proceeds by way of the negative...The negative is both shadow of the problem and false problem *par excellence*. Practical struggle never proceeds by way of the negative but by way of difference and its power of affirmation.'<sup>77</sup> Reynolds suggests in response to this that Deleuze's position is thus a 'dialectic of the multiplicities of difference' rather than one in which dialectics are straightforwardly dismissed.<sup>78</sup> However, the dualisms at work here are complex, as they do not rest upon identity or its negation. Nunes suggest that it is profitable to instead view dualisms (other than that of the virtual/actual pair which remain formally but not ontologically distinct) as dyads, or, 'a relation of exclusive disjunction between two indefinite terms in a dynamic relation of tension that constitutes a field in which the terms themselves become singularised.'<sup>79</sup> This involves a replacement of the negative with the problematic and the question then becomes one not of absolute opposites but poles or 'polarised directionality between two infinite extremes'.<sup>80</sup> Each pole constitutes a greater or lesser actualisation of virtual conditions or the expression of virtuality at a greater or lesser degree of intensity. This means that at issue is not an either/or choice: 'there is, strictly speaking, *only* the middle: if they constitute virtual

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<sup>76</sup> Deleuze, *Difference and Repetition*. p337

<sup>77</sup> Ibid.. p259

<sup>78</sup> Jack Reynolds, "Deleuze's Other-Structure: Beyond the Master-Slave Dialectic, but at What Cost?," *Symposium* 12, no. 1 (2008). p84 n7

<sup>79</sup> Nunes, "Politics in the Middle: For a Political Interpretation of Dualisms in Deleuze and Guattari." p112

<sup>80</sup> Ibid. p112

continua, it would be absurd to ascribe an actual existence to either pole.<sup>81</sup> Thus, within questions of rights and sexuality, the point is not to 'pick a side' but to interrogate what tendencies are being actualised, what intensities are at play and to what extent, and how they have come to be relevant in their particular context. This then is an attempt to think dualisms or divisions as productive rather than oppositional. This approach is significant in relation to the content of this thesis in light of Bignall's suggestion that negativity forms a problematic starting point for action: that negativity, and desire as lack, can easily lead to apathy rather than transformation.<sup>82</sup> For Deleuze, desire is positive, connecting and generative rather than negative, restrictive or based in lack.

Thus Deleuze's critique can be used to bring the limitations of a debate that rests upon the intersection of sexuality and rights into sharper focus. By supplementing our understanding of these debates with a critique of negative dualisms based in identitarian structures and instead thinking the movement back and forth between actual and virtual multiplicities we might begin to expose and think virtual tendencies and pre-individual singularities of the structures to which we are currently subject. This critique exposes and emplaces these dualistic structures as oppositional poles traversed by multiplicitous flows. What operates then is not a negation of identity politics as such but an opening up of the terms by which we currently structure and give meaning to identities.

There is however, a second level to this issue – one to which we have already alluded. This level concerns the privileging of the virtual as either transcendent unity or revolutionary escape: 'a philosophy and politics of the virtual, the minor, the molecular, the micro-political nomadism, lines of flight and (absolute) deterritorialisation.'<sup>83</sup> The result of this is either a depoliticised contemplation of univocity or alternatively, a wild deterritorialisation devoted to the pre-eminence of the micro-political and minoritarianism, leading to a 'cult of the small' and all of the potential for microfascisms and suicidal 'black holes' that this might entail. Instead of this, we must acknowledge that '[t]o affirm deterritorialising power does not mean saying yes to all deterritorialisations, but knowing how to *select*: hence relative deterritorialisations are never separated from the problem of constructing a *plane of consistency* that allows for mutually reinforcing transversal connections – to the point, at times of open antagonism.'<sup>84</sup> In the context of putting forward a critique of rights and identity politics, it is tempting to privilege the line of flight and deterritorialisation and thus to focus on the minoritarian, the radical and the new.

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<sup>81</sup> Ibid. p118

<sup>82</sup> Simone Bignall, "Desire, Apathy, Activism," in *Deleuze and Political Activism: Supplement to Deleuze Studies Vol 4*, ed. Marcelo Svirsky (Edinburgh: Edinburgh University Press, 2010). p11

<sup>83</sup> Nunes, "Politics in the Middle: For a Political Interpretation of Dualisms in Deleuze and Guattari." p108

<sup>84</sup> Ibid. p123

However questions of (de)territorialisations are not absolutes or given – to assume that the minor or the minority will always express the virtual and deterritorialisation is to think transcendently, ascribing an a priori form to actualisations of the virtual ‘separating the actual from its virtual conditions, reducing it to an always already existing form that is ‘filled’ each time with content, rather than a singular being each time.’<sup>85</sup> There is no pre-given or always already decided upon actualisation of virtuality, the virtual is actualised each time as a singular response to a problematic encounter. At issue then is not a question of absolute givens but of locating the molecular in the molar, and indeed, the molar in the molecular. This demands a process of locating structures and thinking through the virtual tendencies that traverse them, and can only be done through the singular actual expressions of virtuality.

In this way, we might avoid imposing an artificial clarity upon the structures with which we are faced, particularly one in which each ‘side’ may be taken as equal and comparable. Thus what we are problematising is both a focus that restricts dualisms to simple either/or closed connections, and a focus that assumes the basic identity or comparability of the terms that make up each side any such connection. This requires an examination of the form, content and structure of the elements that are being used to address issues of rights and sexuality.

In such an approach, the role of sexuality is particularly interesting. I am problematising sexuality by viewing it not as an object that can be grasped, but as a relationship, or better as an aleatory point, or empty square that causes series to resonate with each other, without being limited by particular states of affairs.<sup>86</sup> The empty square does not maintain a fixed position or identity, it does not belong to a particular series and its content can never be fully captured or identified. Yet the empty square is that which puts series into resonance and communication as it moves through them. I want to suggest therefore, that although sexuality tends to be expressed through discourses of identity or sexual orientation, a more accurate reading of sexuality is as an empty square or paradoxical element that eludes capture but facilitates communication. This interpretation allows both a flexible approach to the way in which we understand the location of sexuality in any particular series and provides a degree of insight into why questions of sexuality are often so fraught with contradiction – in essence, an attempt is being made to stabilise or identify something that is always unstable and unidentifiable. As such, the way in which sexuality operates in these various locations means that there must be sufficient flexibility within any methodology or theoretical framework to allow for the holding of multiple positions without descending into incoherence, it is through sexuality as the paradoxical element or empty square that we might allow for this flexibility.

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<sup>85</sup> Ibid. p113

<sup>86</sup> Deleuze, *The Logic of Sense*. p67

This approach shifts focus from one particular truth or rightness of sexuality (and for that matter, one particular foundation or truth of rights) and instead looks to map the contours through which these constructions intersect and interact and the effects of such interactions, both materially and virtually. As Williams notes, a component of Deleuze's moral philosophy is the charting of series of actual turning points and the ideas that they express in order to divine how they constitute new and connected problematic events.<sup>87</sup> The focus is upon connections and multiplicity, both against and in relation to structures and norms of rights. The aim is not to interrogate how well we can adapt demands for sexual justice to existing human rights law and norms, but to draw out the intensity of forces when these series interact and to map the reverberations that such interactions precipitate. To be worthy of the event, Williams suggests, we must not restrict our focus to communication between identities or allow ourselves to be blocked by claims of final negations, 'untouchable and invariant transcendences, values or laws'.<sup>88</sup> Instead 'to be worthy of the event is to redouble it by creating a synthetic communication through disjunction, variation and difference, refusing pure oppositions'.<sup>89</sup> While we may not be able to anticipate the effects of the event, we can respond to its demands for creative change and selection. Thus, the question is one of what demands are being made of those working in relation to sexuality in international law, and how we might respond creatively to these contingencies.

### **Theoretical Outlines 3: 'Undutiful daughters'**

A final brief point should be made here regarding the importance of an explicitly feminist reading of Deleuze to my theoretical framework. Above, I highlight three different elements of my theoretical approach – postcolonial law and theory, Deleuzian theory, particularly Deleuzian approaches to law and jurisprudence, and feminist theory. In my analysis of postcolonial framings of power, knowledge and law, I note the significance of a number of postcolonial theorists and postcolonial legal theorists in foregrounding the dynamics of power and governmentality that striate the questions that are central to my thesis. In my discussion of Deleuzian encounters and events, I draw heavily on both Deleuzian jurisprudence and Deleuzian approaches to actual and virtual, event and encounter. The question that might be asked here is why I find it necessary to complement these two strands of my thesis with a feminist and more specifically Braidottian reading of Deleuze – why I prefer to remain what

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<sup>87</sup> Williams, *Gilles Deleuze's Logic of Sense: A Critical Introduction and Guide*. p141

<sup>88</sup> Ibid. p168

<sup>89</sup> Ibid.

Braidotti has called an 'undutiful daughter'<sup>90</sup> rather than simply exploring the complex intersection of postcolonial theory and Deleuzian jurisprudence.

Any clarification of why a feminist reading of Deleuze is significant must acknowledge both the sometimes uneasy relationship between feminist theory and Deleuzian concepts<sup>91</sup> and the potentiality for a useful intersection of Deleuze and feminism – in later chapters for example, I discuss the relationship between feminist figurations and Deleuzian conceptual personae as useful strategies of dis-organisation familiar to both Deleuzian and feminist thought.<sup>92</sup> However, while the points of resonance between Deleuze and feminism are key to my analysis. I would also argue that a feminist Deleuzian and more specifically a Braidottian approach allows an important and unique perspective. The key point to be drawn out here is Braidotti's commitment to an embodied or 'enfleshed' materialism and most significantly, to the analysis of the power relations within which embodied subjects are enmeshed.<sup>93</sup> Thus, Braidotti's approach foregrounds the politics of location in a way that I find particularly useful. This politics of location or 'situated epistemology'<sup>94</sup> does not demand a unitary subjectivity or stabilised identity, but it does demand that we pay attention to the specifics of difference and power within our particular locations: 'Non-unitary subjectivity here means a nomadic, dispersed, fragmented vision, which is nonetheless functional, coherent and accountable, mostly because it is embedded and embodied.'<sup>95</sup> Braidotti's approach is one of thinking 'different differences' against binarisms or restrictive (molar) accretions of power or identity, yet at the same time, her focus on the embodied, the enfleshed and the material allows her to continue to ask questions of power dissymmetries and differential locations experienced and embodied by non-unitary, nomadic subjects. As such, Braidotti notes that:

Going deliberately against the grain of most contemporary hyper-loyal reception of the co-author of *the Anti-Oedipus*, I shall never tire of asking the debunking question: 'that's all very well, but whatever happened to sexual difference understood as the dissymmetrical power-relations between the sexed subjects?'<sup>96</sup>

These, I would argue are the type of debunking questions that we must ask if we are to remain reflexive and responsible for what we come to know. In Braidotti's approach, we can find these

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<sup>90</sup> Braidotti, *Metamorphoses: Towards a Materialist Theory of Becoming* p68

<sup>91</sup> See eg Ibid. p86-87, p68. Teresa De Lauretis, *Technologies of Gender: Essays on Theory, Film and Fiction* (Bloomington: Indiana University Press, 1987).p24, Jami Weinstein, "Introduction Part 2." *Deleuze and Gender: Supplement to Deleuze Studies* 2, (2008). p25

<sup>92</sup> Claire Colebrook, "Introduction" in *Deleuze and Feminist Theory*. Deleuze Connections (Edinburgh: Edinburgh University Press, 2000) p5

<sup>93</sup> Braidotti, *Metamorphoses: Towards a Materialist Theory of Becoming* p15

<sup>94</sup> Rosi Braidotti, "A Critical Cartography of Feminist Post-Postmodernism," *Australian Feminist Studies* 20, no. 47 (2005). p12

<sup>95</sup> Rosi Braidotti, *Transpositions* (Cambridge: Polity, 2006). p4

<sup>96</sup> Braidotti, *Metamorphoses: Towards a Materialist Theory of Becoming* p103

questions and this responsibility towards the differential impact of power relations. Difference here is foregrounded not just as an ontology or as that which returns eternally, but as a grounded lived experience – as sexual difference, and more broadly, as a dynamic of power.

Thus from Braidotti, we can take a nomadic, vitalist positivity that foregrounds transposition, movement, creation and activity. But at the same time, her work also sounds a note of caution or a reminder to remain firmly focused on the material and grounded circumstances through which such creation is experienced and the particular power dynamics or tensions to which individuals are subject. This is what leads her to repeatedly point to the dangers of deconstructing a subjectivity that has never been fully realised.<sup>97</sup> With Braidotti and in sexual difference feminist readings of Deleuze more generally, we can find both a celebration of immanent creativity, transpositions and becoming, and a warning to pay close attention to the quality of the circumstances through which these transpositions are lived and known. I would argue that my approach to Deleuze is mediated by a desire to practice a responsible politics of location of the sort found in Braidotti; a commitment to this approach enhances our ability to analyse the play of difference and the practice of power.

### **Methodological issues**

The aim of this thesis then, is not just to map the contours of the issues that are at play in relation to rights and sexuality, but also to attempt to chart the intensities of different issues in their individual repetitions in different settings. If we read sexuality as part of a multiplicity constituted of desire, family, nationhood, class, gender, labour, state and many other forces and assemblages,<sup>98</sup> we must also accept that the way in which these series of forces are constituted will vary according to the space and time in which they are encountered. The question therefore is the intensity of the forces at play at each point – the way in which virtuality is actualised into a particular present. The thesis has thus been in large part, an attempt to focus on a number of key issues or events in order to map the series and structures through which they have resonated and the consequences of such resonance.

As such, the specific moments, political debates or laws discussed in the thesis can be taken neither as a general, totalisable representation of the state of international human rights norms and sexuality, nor as unconnected singularities that have no relevance or resonance with each other. They mark an attempt to think through the resonance of connected yet disjunctive series. My intention has been to analyse the way in which certain moments have been addressed (or

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<sup>97</sup> Ibid. p82

<sup>98</sup> See Wendy Brown, *States of Injury: Power and Freedom in Late Modernity* (New Jersey: Princeton University Press, 1995). p83

sometimes not addressed) as human rights issues, or the way in which issues around sexuality have been taken up by and within a human rights discourse. Such moments or occurrences were chosen because they seemed to encapsulate many of the issues at play in discourses of international human rights and sexuality at this particular time. This does not mean that they can be taken as entirely representative of all issues of relevance. Instead, I work with a Deleuzian acknowledgement that all events contain the shadows of virtual objects within their actualised series. By taking a particular focus, it is inevitable that I will close down some avenues of analysis: it is simply not possible to engage with or consider all instances in which sexuality and human rights interact. However, while a restricted focus is inevitable, I have tried to draw on multiple instances to show the connections and interconnections at play, and in doing so attempt to map a number of different fields in which sexuality and rights are able to interact and the factors that are of key significance in these interactions. Broadly speaking, I begin by addressing ‘molar’ or identitarian politics and law in relation to sexuality and rights and move to addressing those elements of campaigning in this area that might more broadly be termed ‘molecular’. Or, I move from looking at the politics of identities, dualities and rights, to the politics of the imperceptible, flows and pre-identitarian micro-movements. However, this approach is taken in the understanding that political change and activism rarely fits neatly into a simple molar/molecular dualism – that change tends to contain elements of both:

‘Abstract machines do not exist only on the plane of consistency, upon which they develop diagrams; they are already present enveloped on or “encased” in the strata in general, or even erected on particular strata upon which they simultaneously organise a form of expression and a form of content...Thus, there are two complementary movements one by which abstract machine work the strata and are constantly setting things loose, another by which they are effectively stratified, effectively captured by the strata.’<sup>99</sup>

This paradox is reflected in the function of rights themselves. Thus, I begin by addressing specific legal changes that have occurred in international governmental bodies in recent years. I then address the way in which activism has engaged with these changes, and more significantly, with the more structural shifts that have made such changes possible – in particular the tentative emergence of what might be seen as a sexual subject. Finally, my analysis turns to the embodiment of such subjectivities within particular locations – or how the sexual subject relates to the human of human rights. Each of these areas of analysis presented specific methodological issues, as discussed below.

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<sup>99</sup> Deleuze and Guattari, *A Thousand Plateaus*. p159



It bears reinforcing that by addressing questions of international human rights law and by selecting issues of law and activism, I am already limiting and framing the way in which I approach questions of sexuality and sexual orientation. My focus on the international as an arena for the analysis of sexuality and rights is deliberately chosen in response to the numerous debates in international legal and activist arenas which call into question ideas of a 'global gay' and emplace questions of identity and belonging as both intensely situated and embedded within specific, locational contexts and at the same time as interactions that move beyond state borders. Widening the arena of analysis to questions of international human rights law brings this double movement between particularities of local singularities and multiplicitous, global networks into the frame. This frame however, is complex and multifaceted – selection and exclusion of cases, issues and debates has been necessary. To try to ensure that this selection does not entirely close off all other avenues of analysis, I adopt a frame that leaves open the possibility of viewing sexuality as part of a transnational multiplicity actualised in different ways at different times and places, and thus highlights the opportunity for connections and relationality. This is not to say that questions of sexuality can or should be subsumed under one particular paradigm or mode of expression – in highlighting multiple different and sometimes conflicting actualisations of sexuality, we simultaneously highlight the multiple, open-ended and changing expressions through which both singularities and the 'whole' of sexuality might be understood. Instead, I am interested in unpicking the various clusters of identity and representation through which we currently approach questions of sexuality and human rights in order to read questions of sexuality outside already established or dominant frameworks or narratives. As such, while I do initially divide chapters into issues of rights and activism, these divisions are not intended to be total or oppositional – questions of law and activism interact and replay questions of sexuality in different ways dependent upon context. It is these connections and questions in which I am most interested.

### ***International Legal Frameworks***

In light of these connections and considerations a key question that motivates my analysis is that of what type of LGBT human rights politics is possible at this time, in particular political and legal structures.<sup>100</sup> With this context in mind I begin by analysing what we might broadly term 'legal changes' within institutions of international law – particularly the UN - in recent years. Such considerations can be slightly problematic, particularly in terms of case law in international or even regional institutions (with some notable exceptions). Much of what can be measured consists of declarations, statements and debates originating from both within and

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<sup>100</sup> Here I am paraphrasing an argument that comes through strongly in Hakan Seckinelgin, "Global Activism and Sexualities in the Time of HIV/AIDS," *Contemporary Politics* 15, no. 1 (2009).p110

without international governmental and legal organisations. However, the fact that there is no clear, well-structured body of law, or treaty specifically addressing sexuality does not mean that there have been no significant normative shifts in relation to sexual orientation, particularly over the last two decades. I take both these normative shifts and two particular instances in which clear movement on issues of sexual orientation is identifiable – the Toonen Judgment of 1994<sup>101</sup> and the General Assembly Statement 2008<sup>102</sup> – in order to try to address the causes and consequences of such shifts as well as the role of human rights, broadly conceived as both a language and a normative framework in discourses of sexuality currently at play in the UN.

My interest in addressing the position of sexuality at the UN is not so much in a listing of the particular changes that have occurred, but in an analysis of wider structural shifts that might have contributed to making such changes possible. An analysis of the changing position of sexuality in relation to human rights norms is also an analysis of changes to these norms themselves – changes that make possible the emergence of a sexual subject. Thus human rights emerge both as an object of analysis in themselves and a point of departure for unpicking some of the wider theoretical implications of the presence or otherwise of discourses of sexual otherness in international institutions.

Central to this analysis is the double movement of rights as facilitators of both emancipation and control. By viewing rights as Deleuzian machines, I am attempting to explore their various different capabilities as facilitators of connection and disconnection, organisation and flow. As De Vos argues: ‘the law (like any form of power) does not just prohibit and control, it does not simply denounce and discredit. It also produces and delivers, and it has the capacity to empower people. It engenders behaviour, it generates ideas and action, it bounds individual responsibility as well as promoting individual capacity and agency and, in so doing, it constitutes individualized notions of identity.’<sup>103</sup> This double movement I would suggest forms both the basis of many critiques for rights that are based in or around particular conceptions of identity, but also a potential opening or mode of engagement with questions of not only rights and sexuality, but also the wider conditions under which the language of rights and sexuality is deployed.

## **Activism**

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<sup>101</sup> UN Human Rights Committee Toonen V. Australia, Communication No. 488/1992 UN Doc. CCPR/C/50/D/488/1992 (1994)

<sup>102</sup> UN General Assembly, Sixty-third session, Agenda item 64(b). Letter dated 18 Dec 2008 from the Permanent Representatives of Argentina, Brazil, Croatia, France, Gabon, Japan, the Netherlands and Norway to the United Nations addressed to the President of the General Assembly. UN Doc. A/63/635 (2008)

<sup>103</sup> Pierre De Vos, “‘the Constitution Made Us Queer’: The Sexual Orientation Clause in the South African Constitution and the Emergence of Gay and Lesbian Identity,” in *Sexuality in the Legal Arena*, ed. Carl Stychin and Didi Herman (London: Athlone press, 2000).p29

An analysis of legal developments alone provides a limited view of the relationship between human rights norms and sexuality. Much of the work in relation to the form of interaction taken by human rights and sexuality occurs not immediately through law, but through the deployment of human rights norms and language in activist/political and academic discourse. This process however, is not necessarily a smooth one, and methodologically, it has presented several problems, particularly relating to the difficulty of processing and unpicking the various different forces and affects at play in relation to what are often highly contentious and sensitive issues.

Of concern here is what the deployment of the unstable sexual subject that has begun to emerge can mean. More pointedly, what possibilities does it close down, and what potentialities can it open up? As such, at issue is the power dynamic within which gay rights groups (or LGBT groups, or queer groups, or groups seeking to address issues of sexual belonging) operate – this is the central focus of the second aspect of my research.

I would suggest that there is a double-sidedness to this issue of power – the first side relates to the flow of material resources, money, etc. and to a dynamic in which (particular) ‘Western’ groups have access to resources, which are then channelled elsewhere in the world. In this dynamic there is an unevenness of ability to work and to speak according to the specificities of particular locations and concerns which relates in part to this flow of resources and the agenda setting power that comes with the control of this flow. However, such an analysis would be incomplete without acknowledgement of the agency of groups in the global South in relation to negotiating and interacting with such flows. This acknowledgement must take place in relation to the second power dynamic that relates not just to the organisation of material resources but to the organisation of knowledge and the organisational function of language and pre-linguistic conceptualisations which colour the very way in which ‘gay rights politics’ as such, can be undertaken, even at a global level. This organisation of language and knowledge, rather than the organisation of resources is the main focus of the chapter: my interest is the way in which increasingly established modes of control govern the possibility for both critique and action. Again, this is not a denial of agency, but an exploration of the framework through which agency can work within global gay rights movements and in particular the way in which these frameworks can shape the possibilities for action and enunciation of assertion and resistance; how, for example, the use of LGBT discourses by Western groups or even by domestic politicians might influence, but not necessarily entirely dictate, the forms through which domestic groups engage in the enunciation of selfhood and resistance.<sup>104</sup> As such, this analysis

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<sup>104</sup>Tom Boellstorff, "Dubbing Culture: Indonesian Gay and Lesbi Subjectivities and Ethnography in an Already Globalized World," *American Ethnologist* 30, no. 2 (2003). Oliver Phillips, "Constituting the Global Gay: Issues of Individual Subjectivity and Sexuality in Southern Africa," in *Sexuality in the Legal Arena*, ed. D Herman and C. F Stychin (Athlone, 2000). p18

involves a repositioning of subjectivity or subjective identities in order to situate the subject within a wider locus and frame of space, power, law and becoming and explore how this framing impacts upon capacities for action and resistance. Much of the analysis is therefore a discussion of the problematic of recognition and identity in relation to activism and the dangerous consequences of misrecognition or problematic deployments of particular identities.

This pillar of my research provided various methodological issues. In terms of questions of misrecognition and critique of identities, the issue becomes one in which developments and problematics are marked by multiple controversies and contentious encounters, through which tensions are enacted and embodied in various, often tragic, ways. My point, and perhaps the methodological concern at hand is that because such issues are so steeped in controversy, engagement with a set of circumstances – and often even attempting to establish what actually happened - becomes highly political or even impossible, and is thus charged with difficult ethical issues.

For example, much activism, discussion and research produced by human rights bodies has addressed the question of Iran executing minors, on charges that in some way relate to sexual crimes, and differing responses and engagements with the Iranian state's actions has fomented controversy, public and private disagreements and much bitterness. In engaging with this issue, I felt that it captured many of the problematics that currently inhere within gay rights politics. One method of analysing the issue at hand might have been to attempt to interview those involved in campaigning and activism around this issue and in doing so attempt to unpick in some way *what actually happened* in one or a number of these cases and attempting to read these facts in relation to the discourses that were constructed afterwards. However, two factors prevented me from taking this approach. The first is the fact that in investigating this particular case in this particular way, I would be limited to talking to particular activists based in the West – practical, safety and even linguistic concerns would shape or constrict the undertaking of any primary research. Thus, my analysis would be limited to communication with those who engaged with the case second hand, often in a second language. This seems to undermine any possibility of doing much more to shed light on the particulars of such events.

Alone, this would probably not be sufficient to prevent me from pursuing interviews with particular campaigners involved in the case and there may indeed be space to undertake research similar to this in future work. However, a second, point is also of relevance: while I do not wish to argue that the truth or otherwise of the guilt of those hanged in Iran is unimportant, I am mindful that because of the burden of excess significance that Rubin suggests can be

attached to sexuality<sup>105</sup>, the meaning of such executions becomes heavily coded and is sometimes fed into a dynamic of representation and recognition with a little less care than should be taken. To me, this seemed to be the wider problematic in play here and viewed from this perspective, the facts of the case are subsumed under a wider flow of power and discourse, or visibility and articulability within a particular activist field.

As such, the determination of 'the facts of the case' seemed to recede as both a legitimate possibility and an ethical requirement. Long suggests that the boys involved in three particular incidents that he discusses 'did not stop dying'<sup>106</sup> and that the overcoding of their deaths within discourses of sexual rights contributed to an erasure of their selves. The ethical imperative here – whether Long's interpretation of all of that occurred is entirely correct or not – seemed to me to be to try to stop contributing to this overcoding. Thus, while such controversies remain my starting point for analysis, I am more interested in the way in which a dynamic, or dualism of identity and belonging contributes to a self-perpetuating political binary of confrontation and omission. My concern is with ways to short-circuit this binary rather than to participate in its reproduction. It is unlikely that I have been entirely successful in doing so, but I would argue that a shift of focus and an awareness of how a problem is constituted as sayable or seeable is a significant first step. My aim then, is not an objective account of what happened in a particular case, or even a critique of the actions of particular individuals, but an attempt to think through why the global gay rights discourse operates as it does and how its operation in this way contributed to particular outcomes. My focus is the confluence of forces that played out in the event and how they worked to reproduce rather than repeat (in a Deleuzian sense) particular dynamics of identity politics. The wider question here then is that of emplacement and intensities, the connections that are being made and the potentials that are closed down and opened up by the particular modes of understanding and expression through which a problem is approached.

My analysis then turned to the consequences of the breakdown of identities in the activist processes, and the way in which political engagement can force the dissolution, rather than hardening, of territorialised identities. The consequences of such deterritorialisation are difficult to track, but do allow a discussion of the particular tensions at play in the political process and the way in which one might exploit, or at least be worthy of the demands made by the exigencies of such tensions. I discuss this in relation to sexuality and rights debates in South Africa, Sao Paulo and the UK at different (limited) time periods. My focus is how activism and

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<sup>105</sup> Gale Rubin, "Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality," in *Pleasure and Danger: Exploring Female Sexuality*, ed. Carol S. Vance (London: Routledge, 1984). p278-9

<sup>106</sup> Scott Long, "Unbearable Witness: How Western Activists (Mis)Recognize Sexuality in Iran," *Contemporary Politics* 15, no. 1 (2009).p133

sexuality might operate oriented towards what Grosz calls a politics of the imperceptible.<sup>107</sup> This is not a claim that any of these movements exhibited a wholly imperceptible politics; instead, I would suggest that elements of their actions showed this imperceptible, micro-political tendency. My interest is what this might mean for future political action.

Of particular interest here is what we might term the relationship between molecularity and duration or the virtual in relation to multiple knowledges or possibilities for action that haunt each actualised event. As such, I am concerned with the role that rights might play at the time of 'critical events' both as a political tactic and as a mode of exploring multiple knowledges or hidden histories that are not necessarily visible or articulable in particular political and legal strata but may be perceived through molecular movements, or counter-actualised in response to particular material possibilities.

It is clear therefore, that this is a discussion that moves from the molar to the molecular, and I focus in some detail on the consequences of a 'molecular' politics. However, any such discussion takes place against the background of molar structures of international human rights and thus my interest stems not from a desire to unquestioningly embrace a molecular politics, but to identify the meeting points between molar law and molecular movement, the surfaces upon which they can interconnect and the way in which rights tend to play a role in both.

### ***Personhood***

The main body of my research is therefore an attempt to map the formations or strata through which concepts of human rights or sexuality, the emerging idea of a sexual subject and the notion of human rights claims related to sexual orientation can be seen and understood. My final area of analysis is the position that particular figures occupy and as such the way in which persons, actors, agents, activists, subjects in any form, are able to operate within such strata. Such analysis comes from a concern with the 'human' aspect of human rights. It is relatively clear that rights discourses are increasingly subject to challenge, modification, deterritorialisation from various directions. I consider how explorations of the 'human', materially embodied, enfolded entity, coincide with and reinforce such problematisations. In essence, while the main body of my thesis considers frames, rhizomes and operations of rights and sexuality, my final stage of analysis turns to how what Povinelli calls 'the uneven distribution of the flesh'<sup>108</sup> interacts with, embodies and articulates such structures. More

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<sup>107</sup> Elizabeth Grosz, *Time Travels: Feminsim, Nature, Power* (Duke University Press, 2005). p194

<sup>108</sup> Elizabeth A. Povinelli, *The Empire of Love: Toward a Theory of Intimacy, Genealogy, and Carnality* (London: Duke University Press, 2006). p8

particularly then, the question is one of how particular abstract machines might be thought of in relation to the human of human rights.

This aspect of the thesis draws on two different modes of engaging 'humanity' or materiality. The first is the notion of the 'figuration' – a construct found particularly in feminist theory. Braidotti describes the figuration as 'a bringing into representation the way of the unthinkable'<sup>109</sup>, or a means of illuminating previously unexpected blind spots. She draws links between figurations and Deleuzo-Guattarian 'conceptual personae': 'A conceptual persona is no metaphor, but a materially embodied stage of metamorphosis of a dominant subject towards all that the phallogocentric system does *not* want it to become.'<sup>110</sup> Thus figurations mark the borders, the becoming-monster or becoming-other, the embodiment of that which does not fit and an expression and genealogy of its specific positioning in space and time.<sup>111</sup> The point of such figurations is not to express new, more accurate representations of sexual being, but to trace lines and emplacements of sexual becoming in order to map the hidden histories of sexual otherness and perhaps actualise or connect with their molecular, imperceptible potentialities.

The second means by which I consider the human of human rights is as the materially embodied person of the activist engaging with the possibility of counter-actualising the event. Deleuze notes that in counter-actualising, the actor will not look to capture an eternal truth or origin (of rights, sexuality, subjectivity) but to 'draw out the intensity and breadth of the event by selecting its underlying movements in a new way, and by playing these through a new acting out, replay or counter-actualisation.'<sup>112</sup> Thus, we could suggest that the actor is not mediating theory and practice, but actively drawing on virtual objects in response to the particular contingencies of location as embodied. This consideration is thus an attempt to begin to bring together some of the paradoxes of human rights and sexuality and an attempt not to resolve them, but to find a way to actively hold them together in a productive disjunction specific to each problematic, viewed as a condition of what is visible and articulable at any particular place and time. Such an approach will not resolve the issues of rights, sexuality and power, but may offer a productive point of departure for escaping some of the binaries in which the discourse currently finds itself.

Thus my research does not attempt to discover an identifiable sexual subject that can be essentialised within a particular rights treaty or discourse. Instead it seeks to widen the frame of analysis through a mechanism of dual emplacement. I look to emplace the sexual subject that

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<sup>109</sup> Rosi Braidotti, "Terratologies," in *Deleuze and Feminist Theory*, ed. Claire Colebrook and Ian Buchanan (Edinburgh: Edinburgh University Press, 2000). p171

<sup>110</sup> Ibid.

<sup>111</sup> Braidotti, *Metamorphoses: Towards a Materialist Theory of Becoming*. p90

<sup>112</sup> Williams, *Gilles Deleuze's Logic of Sense: A Critical Introduction and Guide*. p174

it is increasingly possible to identify, within the particular structures that have made such visibility and articulation possible and explore why this is now the case. This connects with my second strand of emplacement, which relates to the positioning of the activist in a particular time and place, and the potentiality of using this position to pose the questions that lead to counter-actualisation and the embodiment of the specificity of the event in each location. There is, I think, a sense of awkwardness to such analysis – in taking this approach I circumvent some, although not all, of the more recognised means of addressing law and sexuality. However, some of this awkwardness allows for a productive disjunction: that which causes us to pause or stutter can be a productive encounter or a marker of a problematic waiting to be unpicked. There is a multitude of such encounters within the framework of sexuality and rights; my primary aim is to engage with some of them.



### Chapter Three – The changing role(s) of sexual orientation in human rights law and institutions

It is difficult to locate one single moment as the point of emergence of rights concerning sexual orientation in international debates. In large part, this difficulty arises from the way in which it is not always possible or useful to view sexual orientation rights in isolation. Instead we might conceive of such rights as situated within a genealogy of rights that encompasses sexuality, gender and sexual orientation, but also relates to issues of equality, agency, bodily integrity and anti-discrimination, among many others. Thus, while Petchesky argues that sexual rights can be described as ‘the newest kid on the block in international debates’<sup>1</sup> and places the turning point or the point of emergence for sexual rights at the World Conference on Human Rights in Vienna in 1993, we might attempt to understand the events of the conference in relation to other, earlier and later events. For example, case law from the European Court of Human Rights, dating back to the 1981 *Dudgeon v UK* decision<sup>2</sup>, debates on sexuality in spheres other than the law, or feminist challenges to public/private dichotomies might all be viewed as key factors that have allowed for a sustained focus on issues of human rights and sexuality or sexual orientation in international human rights law. We might suggest then, that the ‘mainstreaming’<sup>3</sup> of issues of sexual orientation and gender identity cannot necessarily be traced back to one particular event or organisation of forces. Instead a number of different and often contradictory factors shape the way in which sexuality can be understood internationally as a human rights issue. My focus in this chapter is the question of LGBT or sexual orientation rights as they exist in International Human Rights Law, but it is important to acknowledge that these issues have not emerged in isolation. There is instead a crossover of discourses, tactics and critiques. There are also significant differences and conflicts within this genealogy of sexual rights – as well as various issues that can arise through the conflation of, for example, women’s rights to sexual agency and sexual orientation rights.<sup>4</sup> Nevertheless, it is important to acknowledge the connections that are in operation here in order to situate the debates that are currently in circulation.

The focus of this chapter, however, is sexual orientation rights (or LGBT rights) and the place that they currently occupy in international debates. The chapter first outlines some of the key international legal documents and developments specifically relating to sexual orientation. It

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<sup>1</sup> Petchesky cited in Richard Parker, Regina Maria Barbosa, and Peter Aggleton, "Introduction: Framing the Sexual Subject," in *Framing the Sexual Subject: The Politics of Gender, Sexuality, and Power*, ed. Richard Parker, Regina Maria Barbosa, and Peter Aggleton (London: University of California Press, 2000).p13

<sup>2</sup> Douglas Sanders, "Sexual Orientation in International Law," ILGA, [www.ilga.org. http://ilga.org/ilga/en/article/577](http://ilga.org/ilga/en/article/577) accessed 28/02/2012

<sup>3</sup> Matthew Waites, "Critique of "Sexual Orientation" and "Gender Identity" in Human Rights Discourse: Global Queer Politics Beyond the Yogyakarta Principles," *Contemporary Politics* 15, no. 1 (2009).p151

<sup>4</sup> See eg Cynthia Rothschild, Scott Long, and Susana Fried, *Written Out: How Sexuality Is Used to Attack Women's Organising* (2005).

then addresses two key moments – namely the Toonen Judgment and the 2008 letter to the United Nations General Assembly in order to unpick some of the issues of power, language and subjectivity in relation to sexuality and human rights. The broader methodological point to be made here relates specifically to the problem of addressing ‘international’ scapes in relation to sexuality and law. I have suggested above that questions of sexuality and rights have been addressed in various different modes in recent international documents: any one of these might be a means by which we could address themes of sexuality and human rights international law. The relevant issue here is the fact that there is neither one particular instant that perfectly embodies all possible expressions of either sexual orientation or sexuality and human rights in international law, nor a way in which we might address every single instance in which these topics are relevant. Furthermore, it is not necessarily the case that a simple cumulative listing of all instances would suffice to express the complexity at hand. I would suggest instead that the event becomes the ground by which we can determine what is and what is not relevant to our analysis<sup>5</sup> as it is only by locating instances in the event, as simultaneous but not identical material actualisations and virtual moments, that we can fully comprehend their connection. This however, does not detract from the fact that an analysis of the Toonen Judgment and the UNGA statements form an act of selection that will necessarily bring particular elements to the forefront, while masking others. This is inevitable: some selection must occur in order to make analysis possible. My motivation for selecting Toonen and the General Assembly Statements in this chapter is their direct engagement with the terminology of ‘sexual orientation’ in high profile arenas – this is still a relatively recent and rare occurrence in international institutional legal and political frameworks. However, this selection takes place while recognising both that each expression and enunciation of sexual orientation and human rights is one particular expression of a larger whole and further, that the particularities of Toonen and the UNGA statements did not take place in isolation. As such, I attempt to situate these occurrences within a wider framework of political and legal activity and to draw out the various themes that are at play.

### **Sexual Orientation in Human Rights Law and Institutions**

Parker, Barbosa and Aggleton cite Petchesky in order to suggest that prior to 1993 ‘no international instrument relevant to human rights made reference to sexuality or sexual rights – the idea of sexual rights simply did not exist as part of international human rights discourse.’<sup>6</sup> The case is not necessarily as clear cut as this quote indicates: cases from the European Court as well as international campaigns linking sexuality to other human rights issues indicate that links

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<sup>5</sup> Nathan Moore, "Icons of Control: Deleuze, Signs, Law," *International Journal for the Semiotics of Law* 20 (2007). p40

<sup>6</sup> Parker, Barbosa, and Aggleton, "Introduction: Framing the Sexual Subject."p13

had been made between sexuality and rights in public international discourse, if not in international law prior to 1990.<sup>7</sup> It might be more accurate to suggest instead that throughout the course of the 1990s and 2000s, a number of developments have contributed to the stabilisation of the way in which sexual rights are emplaced and understood within international human rights law and discourse. Rights specifically addressing sexual orientation can be identified as both contributing to and emerging from this process of stabilisation.

A number of factors and events are significant here. Petchesky rightly points to the 1993 Human Rights Conference in Vienna in which there was sustained pressure for the elimination of gender based violence, sexual harassment and exploitation, as well as the 1994 International Conference on Population and Development in Cairo as important turning points. More directly relevant to this chapter however, is the landmark 1994 UN Human Rights Committee ruling on sexual orientation and the right to privacy; the implications of this decision are considered in more detail below. A number of scholars and activists have also sought to indicate the way in which issues of sexuality and sexual orientation are already implicated in existing human rights documents and norms. One of the best examples of this might be the Yogyakarta Principles, which were drafted as a result of the meeting of international human rights experts in Yogyakarta in 2006 and outline a 'set of international principles in relation to sexual orientation and gender identity.'<sup>8</sup> The document produced does not create new laws so much as outline the specific violations of rights that are suffered as a result of discrimination, violence, exploitation or abuse based on sexual orientation or gender identity. Similarly in 2006, the International Conference on LGBT Human Rights, held as part of the 1<sup>st</sup> World Outgames endorsed the Declaration of Montreal, described by its authors as 'an attempt – perhaps the first one – to summarize the main demands of the international LGBT movement in the broadest possible terms, so as to make the document useful at a global level and in all parts of the world.'<sup>9</sup>

Documents such as the Yogyakarta Principles or the Declaration of Montreal remain hugely controversial. They have in no sense been uncritically accepted either by those who seek to block the consideration of issues of sexual orientation or gender identity, or by those who do not consider such measures to go far enough. Despite such criticism, there is scope to suggest that they have become increasingly significant soft law documents and have been endorsed and cited by both governmental and intergovernmental bodies.<sup>10</sup> Within the UN itself, battles

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<sup>7</sup> eg *Dudgeon v The United Kingdom* (App no 7525/76) (1982) 4 EHRR 149

<sup>8</sup> [www.yogyakartaprinciples.org](http://www.yogyakartaprinciples.org) accessed 6/12/2011

<sup>9</sup> [www.declarationofmontreal.org/declaration](http://www.declarationofmontreal.org/declaration) accessed 6/12/2011

<sup>10</sup> Ettelbrick, Paula & Zeran, Alia Trabucco 'The Impact of the Yogyakarta Principles on International Human rights Law Development' *A Study of November 2007-June 2010* [www.ypinaction.org](http://www.ypinaction.org)

regarding the meaning and place of sexuality have been particularly contentious,<sup>11</sup> but it is possible to trace an increasing awareness – albeit an awareness that is not always welcome – of tools and terminology for addressing human rights issues in relation to the specific experiences of sexual minorities (most often addressed in terms of ‘sexual orientation and gender identity’). As Saiz suggests, political concerns do colour the context in which this is a more coherent possibility – there has been a marked increase in the discussion of sexual orientation in the reports of special rapporteurs<sup>12</sup> and other treaty monitoring bodies<sup>13</sup> for example. At the time of Saiz’s article (2004), these developments were matched by a lack of movement in other UN bodies – particularly those such as the Commission on Human Rights (now replaced by the UN Human Rights Council). Saiz suggests that as bodies such as the Commission on Human Rights were made up of government representatives, domestic political considerations might play a more significant role in decision-making.<sup>14</sup> While this political tension remains extremely relevant, there have been some developments in even the most ‘political’ of UN bodies. Most notably, in 2008 a letter condemning discrimination on the grounds of sexual orientation was presented to the General Assembly and endorsed by a small majority of member states.<sup>15</sup> More recently, in June 2011, the UN Human Rights Council (UNHRC) adopted its first ever resolution on Sexual Orientation and Gender Identity.<sup>16</sup> Mention of sexual orientation in periodic reviews to the Human Rights Council has also become more normalised<sup>17</sup> (though again, not uncontroversial). A small number of LGBT organisations now hold consultative status at the Economic and Social Council.<sup>18</sup> Such developments remain controversial and are the product of a great deal of slow and painstaking work, but they do suggest that an interlinkage is increasingly being made between human rights norms and the problems faced by individuals on the basis of their sexual orientation or gender identity.

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<sup>11</sup> UN General Assembly *Department of Public Information* Sixty-Fourth General Assembly, Third Committee 28<sup>th</sup> & 29<sup>th</sup> Meetings, UN Doc. GA/SCH/3959 (2009)

<sup>12</sup> A number of special rapporteurs have made special reference to issues of sexuality and sexual orientation in their reports and recommendations. Examples include UN Doc E/CN.4/2004/49 (2004), UN Doc A/64/211 (2009) UN Doc. A/HRC/14/20 (2010), UN Doc. A/HRC/14/24 (2010)

<sup>13</sup> Ignacio Saiz, "Bracketing Sexuality: Human Rights and Sexual Orientation - a Decade of Development and Denial at the UN," in *Culture, Sexuality and Society*, ed. Parker and Aggleton (London: Routledge, 2004).p460-461 Françoise Girard, "United Nations: Negotiating Sexual Rights and Sexual Orientation at the UN," in *Sexpolitics: Reports from the Frontlines*, ed. Richard Parker, Rosalind Petchesky, and Robert Sember (Sexuality Policy Watch). p357

<sup>14</sup> Ibid. p464

<sup>15</sup> UN General Assembly, Sixty-third session, Agenda item 64(b). Letter dated 18 Dec 2008 from the Permanent Representatives of Argentina, Brazil, Croatia, France, Gabon, Japan, the Netherlands and Norway to the United Nations addressed to the President of the General Assembly. UN Doc. A/63/635 (2008)

<sup>16</sup> ‘Historic Decision at the United Nations’ <http://www.ighrc.org/cgi-bin/iowa/article/pressroom/pressrelease/1417.html> accessed 9/11/2011

<sup>17</sup> See eg – UN Doc. A/HRC/14/16 (2010) and UN Doc. A/HRC/16/14 (2011)

<sup>18</sup> Federación Estatal de Lesbianas, Gays, Transexuales y Bisexuales (2008), Danish Association for Gays and Lesbians (2006) Associação Brasileira de Gays, Lésbicas e Transgeneros (2009), Swedish Federation for Lesbian, Gay, Bisexual and Transgender Rights (2007), Lesbian and Gay Federation in Germany (2006), International Lesbian and Gay Association — Europe (2006), International Gay and Lesbian Human Rights Commission (2010)

Such developments are significant, not only in their own terms, but also for the wider impact that they may have – for their potential to open new channels of discussion and contribute to a wider framework of change. For example, Saiz celebrates the ‘new conceptual tools’ created by the Toonen Judgment.<sup>19</sup> He argues that decisions like Toonen contribute to the construction of a discourse and framework for action that makes it increasingly possible to address sexual orientation as a credible issue in human rights terms and within international human rights bodies.

Furthermore, changes within the UN are matched, and sometimes preceded by developments in regional bodies and courts. It is perhaps unsurprising that the ECtHR has been the most prolific in this area, with the majority of cases heard, if not always successfully, in this arena. (The fact that this is the case is perhaps a cause for analysis of the terms in which LGBT issues are being addressed.) Similarly, conditions for entry into the European Union have included stipulations on LGBT rights.<sup>20</sup> However, this does not mean that all LGBT human rights work occurs in Europe – for example, 10 days before the UNHRC resolution on sexual orientation and gender identity was adopted, the General Assembly of the Organization of American States adopted a resolution condemning ‘discrimination against persons by reason of their sexual orientation and gender identity.’<sup>21</sup> These transnational movements have also found some resonance in particular national cases and constitutions in a variety of states.<sup>22</sup>

Two observations should be made here. The first relates to the fact that the impact of such changes in the UN and in regional and national jurisdictions will have varying impact depending upon location. The use of both human rights terminology<sup>23</sup> and notions of sexual orientation

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<sup>19</sup> Saiz, "Bracketing Sexuality: Human Rights and Sexual Orientation - a Decade of Development and Denial at the UN."

<sup>20</sup> 'On September 7th, 1998, the European Parliament passed a resolution stating that it would not "give its consent to the accession of any country that, through its legislation or policies, violates the human rights of lesbians and gay men". It went on to criticize Austria, Bulgaria, Cyprus, Estonia, Hungary, Lithuania and Romania for unfair treatment of lesbians and gay men. Discriminatory laws were repealed in Lithuania in September, 2000, Estonia in September, 2001, Romania in December 2001, Cyprus in July, 2002, and Hungary and Bulgaria in September, 2002.' Sanders, "Sexual Orientation in International Law."

<sup>21</sup> Organization of American States General Assembly, 41<sup>st</sup> Regular Session, 2011 Proceedings Vol 1 AG/DEC. 66 – AG/DEC 68 (XLI-O/11) AG/RES.2617 – AG/RES.2689 (XLI-O/11)

<sup>22</sup> It is not possible to list all developments in relation to sexual orientation here, but we might particularly note the 2009 Naz Foundation v. Delhi ([2009] 4 LRC 838) case in the Delhi High Court in which read down Section 377 of the Indian Penal Code. Also of interest is the 2010 HJ (Iran) & HT (Cameroon) v Secretary of State for the Home Department ([2010] UKSC31) in which the grounds of 'reasonable tolerance' and the 'discretion test' were overturned as grounds for refusing asylum. These cases do not represent the totality of national developments in relation to sexuality, but they are both interesting in that there was an international component to both judgments – in the case of the Naz judgment, a campaigning pack produced by those favouring decriminalization drew explicit attention to the regionalisation of the criminalisation of homosexuality. The UK judgment both concerned questions of asylum and movement across borders and was attended and observed by a number of international organisations, including the UN.

<sup>23</sup> Kelly Kollman and Matthew Waites, "The Global Politics of Lesbian, Gay, Bisexual and Transgender Human Rights: An Introduction," *Contemporary Politics* 15, no. 1 (2009).

and gender identity<sup>24</sup> will have more resonance in certain locations. Some groups and individuals are better positioned to take advantage of legal changes, others are simply not constituted in such a way as to make changes to international human rights law or instruments a relevant or significant factor in the place of sexuality in their lives.

The second significant factor to consider here is the possibility of backlash against these gains, which can be played out both within and without intergovernmental bodies. In recent years, a number of states have attempted to introduce or hardened legislation criminalising homosexuality.<sup>25</sup> While it would not necessarily be accurate to draw a direct causal link between recent gains in relation to human rights and sexuality and national law without considering other, contributing factors, we might speculate that an increased visibility of sexuality as a mode of human rights intervention may work to motivate both national legislators and powerful international coalitions seeking to oppose the possibility of increasing sexual rights in any sphere.<sup>26</sup> This is not to say that all those who seek to (re)-criminalise homosexuality, or to constitute sexuality as a cultural rather than a human rights issue are motivated by the same factors. Issues around sexuality are intensely political and multifaceted – what may be primarily a religious issue for one group or individual can be an issue of power, scapegoating or seeking public support in sympathetic arenas for others. Therefore, while a great deal of work has been done on micro-politics *within* sexual rights movements (this thesis included), it should be noted that such micro-politics are not necessarily always limited to those in favour of sexual rights – in recent debates for example, the Vatican has distanced itself from any legislation or amendments that seek the criminalisation of homosexuality.<sup>27</sup> In essence, while their opposition to the normalisation, acceptance and legislation in favour of homosexuality may unite such groups; their responses and tactics may differ.

Despite these differences, it remains the case that an opposition to homosexuality can often be a unifying factor among hugely disparate groups. Such groups can have powerful political impact, in terms of removing or adjusting wording in treaties<sup>28</sup>, blocking statements or rejecting the recommendations of special rapporteurs<sup>29</sup> or simply by closing down or ensuring that discussions remain trapped within particular paradigms or binaries. As Kate Sheill suggests

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<sup>24</sup> Waites, "Critique of "Sexual Orientation" and "Gender Identity" in Human Rights Discourse: Global Queer Politics Beyond the Yogyakarta Principles."

<sup>25</sup> Most contentious has been the 'Kill the gays' bill recently tabled in the Ugandan Legislature: <http://www.ugandans4rights.org/issues.php> accessed 6/12/2011 'IGLHRC shocked at possible passage of Ugandan Anti-Homosexuality Bill' <http://www.iglhrc.org/cgi-bin/iowa/article/pressroom/pressrelease/1384.html> accessed 6/12/2011

<sup>26</sup> See Rothschild, Long, and Fried, *Written Out: How Sexuality Is Used to Attack Women's Organising*

<sup>27</sup> UN General Assembly Sixty-third session 71st Plenary Meeting, UN Doc A/63/PV.71 (2008) p2

<sup>28</sup> Joke Swiebel, "Lesbian, Gay, Bisexual and Transgender Human Rights: The Search for an International Strategy," *Contemporary Politics* 15, no. 1 (2009). p25-26

<sup>29</sup> Richard Parker, Rosalind Petchesky, and Robert Sember, eds., *Sexpolitics: Reports from the Front Lines* (Sexuality Policy Watch). p20, p325. p352

however, what such coalitions have failed to do is to remove the issue of sexuality from the agenda entirely.<sup>30</sup> Sexuality remains an issue or a problematic in international human rights norms and institutions. I would also suggest that the way in which these norms and institutions approach and constitute issues of human rights and sexuality is increasingly in a position of change and instability, which may further contribute to the increased visibility and contentiousness of the topic in international and national discourses.

It should be highlighted that I am not pointing to this instability as a 'new beginning' or 'new' visibility of sexuality. My aim is not to constitute a foundational truth of sexuality, but to start in the middle and trace its flux and continual reformulation. As such, the law has not suddenly 'discovered' sexuality; indeed, the 'Alien Legacy' of colonial involvement in and regulation of sexuality has been well documented.<sup>31</sup> The 'civilisational' aims of the colonial era brought different constitutions of sexuality and gender into focus and often resulted in either the simplification, essentialisation or reification of complex systems of sexuality and gender norms<sup>32</sup> or in a brutal repression of what were viewed as backwards or uncivilised practices.

We might suggest then that sexuality and power will always be interlaced in complex ways and that the mode in which sexuality is lived and configured will always be multifaceted and contested. The fact that this is the case makes two further points of particular significance. The first is the argument that sexuality exists as an 'empty square' or 'aleatory point': it draws a number of resonating series or sequences together, but itself remains unfixed and moving.<sup>33</sup> Sexuality circulates among series distributing singularities and creating connection but not synthesis. Thus in this way, we can think of sexuality as the bringing together of related and diverse singularities of bodies, matter, forms and expressions yet the structure that these forms take is neither pre-ordained nor permanent, it is instead a nomadic distribution.<sup>34</sup> What this means is that our understandings of sexuality must necessarily include a process of limitation or prioritisation of how we understand sexuality – our attempt to give shape and definition to what constitutes what we currently understand to be 'sexuality' must be limited, we must select the arena within which we work. However, this process of selection must take place against a background understanding of the constantly unfinished and open nature of the subject matter with which we are dealing: in short, there will always be an aspect of sexuality that our

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<sup>30</sup> Kate Sheill, "Human Rights, Sexual Orientation, and Gender Identity at the UN General Assembly," *J Human Rights Practice* (2009).

<sup>31</sup> Alok Gupta, "This Alien Legacy: The Origins of "Sodomy" Laws in British Colonialism," ed. Human Rights Watch (Human Rights Watch, 2008).

<sup>32</sup> Patricia Uberoi, ed. *Social Reform, Sexuality and the State* (New Delhi: Sage, 1996). Uma Narayan, *Dislocating Cultures: Identities, Traditions and Third World Feminism* (London: Routledge, 1997). p67

<sup>33</sup> Gilles Deleuze, *The Logic of Sense*, ed. Constantin V. Boundas, trans. M. Lester and C. Stivale (London: Continuum, 2004). p199

<sup>34</sup> Ibid. p87

definitions cannot capture. This openness or unfinished aspect demands that while we may pay attention to or single out particular aspects of sexuality for analysis (in this case for example sexuality and human rights in international law) this analysis must take place against a background that acknowledges that which is elided or pushed into the background by the way that our analysis is framed.

The second point to consider here relates to my emphasis on viewing work in and analysis of sexuality as starting from the middle rather than constituting itself as part of some kind of teleological development. Binnie has pointed to the danger of configuring gay liberation as the pinnacle of sexual development and the point towards which all campaigning should be moving.<sup>35</sup> I am wary of constituting the emergence of sexual rights as a 'new' and thus 'better' or more civilised way of thinking about sexuality, thereby reinforcing colonial norms of Western civilisation that must be exported to the rest of the world. This is not to say that developments relating to sexual rights are not to be welcomed; what is needed is instead a shift in how we approach these changes – viewing them as points of tension through which we can trace rhizomatic expansion and multiplicitous flows rather than an 'arborescent' development towards a particular always already established end.

### ***Toonen vs. Australia***

The remainder of this chapter will focus on two key instances in the politics of rights and sexuality at the UN and then attempt to use these instances to advance some insights into both the opportunities and problems that form part of the complex multiplicity that is human rights and sexuality. The first area of analysis concerns the case of *Toonen vs. Australia* (1994) in which the UN Human Rights Committee held that under Article 17 of the ICCPR, current Tasmanian law breached the privacy rights of the Tasmanian gay rights campaigner, Nicholas Toonen.<sup>36</sup> There is no doubt that the Toonen decision was an extremely significant moment in relation to the position of human rights and sexual orientation in international arenas. Saiz suggests that it has become 'an authoritative reference for a series of successful legal challenges to discriminatory criminal laws around the world'<sup>37</sup> Referred to as 'the first juridical recognition of gay rights on a universal level'<sup>38</sup>, the Toonen judgment offered clear opportunities for doing further work in human rights and sexuality at the UN and beyond. While sexuality had previously only been on the UN agenda as something to be circumscribed or regulated in the

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<sup>35</sup> J Binnie, *The Globalization of Sexuality* (London: Sage, 2004).

<sup>36</sup> UN Human Rights Committee, *Toonen V. Australia*, Communication No. 488/1992 UN Doc CCPR/C/50/D/488/1992 (1994)

<sup>37</sup> Saiz, "Bracketing Sexuality: Human Rights and Sexual Orientation - a Decade of Development and Denial at the UN." p459

<sup>38</sup> Joseph 1994 cited in Ibid.



interest of public health, order or morality, with *Toonen*, it was 'for the first time implicitly recognized as a fundamental and positive aspect of human development.'<sup>39</sup> This is not to say that there have been no controversies or setbacks since 1994, but as Saiz sketches out, there is now considerable scope to address issues of sexuality through certain (but not all) UN institutions. He concludes that '10 years on from *Toonen*, the momentum at the UN for addressing issues of sexual orientation within a broader framework of sexual rights is unstoppable.'<sup>40</sup> For Saiz, *Toonen* marks a turning point and a movement away from a particular structure of silencing or containment of sexual issues within the UN and despite setbacks, this development remains positive.

Interestingly, while Saiz's analysis of the impact of the *Toonen* decision at the UN is that it was generally positive, Henderson suggests that in Tasmania, the judgment became something of a double-edged sword. There is no doubt that it resulted in legal changes, but for some, the changes were an outside imposition on 'authentically Tasmanian values', a challenge to Tasmanian sovereignty from both federal and international authorities. This feeling was perhaps not helped by the fact that although *Toonen* referred to a Tasmanian law and the right to privacy or otherwise of Tasmanian citizens, it was the Australian state that defended the case – and it did so without any particular conviction at a UN body formed of members whose own states did not necessarily grant any more recognition to sexual orientation than Tasmania. Such dynamics were reinforced by the particular relationship between Tasmania and the rest of the Australian state – a history in which the sense that 'Tasmania is not Australia' or perhaps that Tasmania had a cultural identity separate from that of mainland Australia, persists and inheres. The position of Tasmania as culturally separate or as both an insider and an outsider creates particular tensions that were only reinforced by the lack of ability to make direct representation to the UN. As such, once the judgment was handed down, it could easily be viewed as an invasive imposition rather than the recognition of the rights of integral members of Tasmanian society. Thus the *Toonen* victory may have achieved legal reform, but it did not necessarily foster wide ranging social change. In essence, same sex activity may no longer have been illegal in private, but it was certainly not always welcomed or considered to be an equal or valued way of living one's life: public equality did not correlate with private tolerance.<sup>41</sup> The recourse to legal methods and rights eventually resulted in decriminalisation, but did nothing to further (and may even have hindered) the institution of, for example, safer sex education, the inclusion of gay sexuality in public school sex education classes, or more generally an acceptance of a

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<sup>39</sup> Ibid.p459

<sup>40</sup> Ibid. p470

<sup>41</sup> Emma M. Henderson, "'I'd Rather Be an Outlaw': Identity, Activism, and Decriminalization in Tasmania," in *Sexuality in the Legal Arena*, ed. Carl Stychin and Didi Herman (London: Athlone, 2000).

legitimate claim to belonging and visibility on the part of gay Tasmanians.<sup>42</sup> Thus the Tasmanian example suggests that the use of legal channels can have contradictory outcomes. As Henderson notes, the legislation eventually put in place 'was equal to the best yet to be seen in Australia'<sup>43</sup>, but the relationship between law, politics and cultural/social norms is one of resonance rather than reflection and as such, decriminalisation did not create an immediate space for the pursuit of far reaching social change and indeed, may have created conditions in which far reaching changes were more difficult to institute.

Thus, the fact that Toonen's claim was upheld by the UN Human Rights Committee suggests that he had a legitimate grievance to be addressed, but the manner in which the event ultimately played out led to a (re)positioning of sexual orientation questions as un-Tasmanian, inauthentic and the concern of external legal bodies. This positioning illustrates the limitations of the law and legal bodies in the face of cultural or social formations. Sexuality and sexual orientation in this case occupies a complex position as it speaks to and is addressed by multiple different discourses and structures – including law, social and cultural formulations, private desires, family structures – sexuality brings all of these series together in a complex assemblage. Changes to one part of this assemblage - for example legal changes - will resonate within other parts – in this case, social and cultural mores – however this resonance is not necessarily predictable, or to put it more simply, social and cultural factors will be impacted upon by legal changes, but these social and cultural factors will not directly mirror what is occurring in the legal sphere. A re-positioning or reiteration of Tasmanian norms in relation to sexuality occurred because of, or in relation to, a specific legal judgment, but this normative reiteration resonated with, or responded to rather than reflected, the judgment that was handed down.

This hardening of insider/outsider, belonging/non-belonging, authentic/foreign binaries is not unique to the Toonen Judgment. Other cases have reflected this sketching out of binaries of belonging/non-belonging as part of arguments around sexual rights. In the recent Naz Judgment in the Delhi High Court, for example, much was made of both the existence of an 'authentic' Indian homosexuality *and* the 'modernity' of those nations that had already decriminalised homosexuality (and therefore the attractiveness of belonging to this group rather than the more 'backward' nations who maintained criminal punishments for homosexuality).<sup>44</sup> In his dissenting opinion in the Dudgeon Judgment, Judge Zekia draws a similar binary noting that as a Cypriot judge, he understood the outcry that would result from legal change to the status of homosexuals in Ireland as '[b]oth countries are religious-minded

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<sup>42</sup> Ibid. p48

<sup>43</sup> Ibid.

<sup>44</sup> Rahul Rao, *Third World Protest* (Oxford: Oxford University Press, 2010).

and adhere to moral standards which are centuries old.’<sup>45</sup> Despite myriad differences between Cyprus and Northern Ireland, Zekia’s opinion draws on a sense of a totalising cultural morality (‘the protection of morals held in high esteem by the majority of people’), implicitly constituting the homosexual as both the unnatural other and the outsider to ‘normal’ society. These notions of coherent moral standards of a nation (or indeed the threat to the integrity of a nation that might come from those who deviate from these posited moral standards) can become highly politicised. Rothschild has noted, for example, the way in which accusations of ‘abnormal’ sexuality can be used to constitute an argument as ‘irrelevant’ to a particular culture, or to shut down a particular line of activism or campaigning. As such, an accusation of ‘lesbianism’ becomes a means of shutting down discussion of women’s rights, leaving campaigners trapped between denials of lesbian sexuality that both reinforce a dangerous insider/outsider dynamic and position lesbian sexuality as something to be condemned, and attempting to defend both their rights demands and suggest that lesbian sexuality is positive thing, thus potentially reinforcing the blurring of gender, sexuality, gender based rights and externality.<sup>46</sup> In such discourses, sexuality is a powerful tool for denoting insider and outsider, acceptable and unacceptable.

Thus, in many instances, we can read sexuality or at least issues that surround sexuality not just as questions of rights or law, but also as a line by which various other questions of identity and belonging are marked out, whether this be belonging to a nation, or to a mode of ‘civilisation’ or ‘morality’. This becomes hugely problematic, as it very quickly becomes the case that any discussion of sexuality is rarely *just* about sexuality, but about myriad other factors which must be both acknowledged but also limited and selected from in order to make any kind of in-depth analysis possible. Sexuality can rarely be reduced to a simple discussion of bodies or drives (although these aspects of sexuality should not be ignored); it must be instead understood as part of an entire matrix of social, economic, cultural and relational forces, complicated further by the fact that ‘sexuality’ or indeed sexual orientation are not neutral concepts, but particular products of time and place. Indeed the question of ‘where one starts from’ is perhaps as important as how one eventually addresses the issues at hand.

It is not surprising therefore, that there exists a great deal of tension and negotiation in any discussion of sexual rights. A focus on sexuality opens up particular norms and discourses to destabilisation or deterritorialisation – its position as both embedded in, but moving through a variety of series suggests that, at present at least, sexuality or sexual rights can be a useful tool

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<sup>45</sup> *Dudgeon v The United Kingdom* (App no 7525/76) (1982) 4 EHRR 149 Dissenting Opinion of Judge Zekia

<sup>46</sup> Rothschild, Long, and Fried, *Written Out: How Sexuality Is Used to Attack Women's Organising*

for understanding and unpicking various established assemblages. Sexuality does not provide answers, but can force further questions about established roles and organisations.

### ***Sexual Orientation and Gender Identity Rights at the UN***

The second area of analysis concerns the engagement of a number of the more 'political' UN bodies in relation to sexuality and human rights. Of particular interest here is the 2008 letter to the General Assembly condemning discrimination on the grounds of sexual orientation and gender identity. However, this letter cannot be viewed in isolation but must instead be situated in relation to other recent developments concerning sexual orientation and gender identity in bodies such as the Commission on Human Rights and the Human Rights Council. It should be noted at the outset that the positioning of such issues in the UN is sometimes tenuous, constantly contested and occasionally surprising. As such, it is a useful forum for further addressing some of the issues raised above.

#### *Commission on Human Rights*

In 2003, somewhat unexpectedly, Brazil proposed a resolution to the Commission on Human Rights entitled *Human Rights and Sexual Orientation*, modelled on the Universal Declaration of Human Rights. Girard suggests that for Brazil, this resolution might have appeared to be a natural follow up to its recent positions on sexuality at the global level.<sup>47</sup> It might also be viewed as the progression of the kind of developments outlined by Saiz. However, to other governments and activists the move came as a surprise – perhaps particularly given the controversy of the subject matter and the significance of presenting the issue to a vote in the Commission on Human Rights. There had been no consultations on the draft resolution, either with interest groups or with other governments before it was presented.

The resolution proved highly divisive and controversial, Girard notes that '[a]ction on the resolution was confined to aggressive procedural manoeuvring, with little substantive debate.'<sup>48</sup> There was fierce opposition from states such as Pakistan and Saudi Arabia, as well as from the Holy See: the delegate from Pakistan described the resolution as an 'insult to all the 1.2 billion Muslims in the world' in a memo addressed to other governments.<sup>49</sup> The view was taken by

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<sup>47</sup> Brazil had been strongly supportive of sexual rights and sexual orientation rights in a number of different arenas: it had pushed for the inclusion of sexual rights at Beijing+5 in 2000, supported the inclusion of 'MSM' in the 2001 Declaration of Commitment on HIV/AIDS, and played a leading role in advocating for 'sexual orientation' at the UN World Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance in 2001. Girard, "United Nations: Negotiating Sexual Rights and Sexual Orientation at the UN." p341

<sup>48</sup> Ibid. p344

<sup>49</sup> IGLHRC, "Resolution on Sexual Orientation and Human Rights, United Nations Human Rights Commission: IGLHRC Campaign Dossier," at [www.iglhrc.org](http://www.iglhrc.org) (2003-2004). p10

some African diplomats that homosexuality was ‘something that came with the white man’<sup>50</sup> rather than a concern for their countries. The resolution was eventually postponed until 2004. While this postponement gave LGBT activists time to prepare and to attempt to bring about a broad-based coalition in support of the resolution,<sup>51</sup> in the intervening year, a great deal of work against the resolution also took place, including huge amounts of pressure apparently placed on Brazil by the Holy See through domestic channels and by OIC states who threatened to boycott a trade summit Brazil was due to host later that year.<sup>52</sup> Brazil eventually announced that it would not proceed with the resolution and as no country could be found to step in as sponsor, by 2005 the resolution had lapsed.

The failure of the resolution is both a disappointment and an indication of some of the problems faced by activists working in this area. There is no question that overt pressure was mobilised in order to block or change the nature of the resolution by its opponents, and these shows of hard power were doubtless effective. However, this was not the only problem faced by LGBT groups and allies. Of further contention, for example, was the question of tactics: Brazil proposed an ambitious resolution based on notions of sexual orientation and rights, modelled on the UDHR. This is not the first instance of using already established rights discourses to claim sexual orientation rights<sup>53</sup>, but it does raise various issues. Most significant is whether a broad based resolution was the correct approach to take – whether more progress could be made by working with Special Rapporteurs on issues such as arbitrary executions or sexual violence, in order to bring issues of sexuality to the Commission in ‘a more organic way.’<sup>54</sup>

Additionally, the broad and undefined nature of ‘sexual orientation’ caused a number of other issues. Waites has highlighted the way in which ‘sexual orientation’ is often taken to be axiomatic in questions of sexuality.<sup>55</sup> However, a lack of interrogation of the terms used led to a degree of disconnect and confusion – both on the part of governments who viewed homosexuality as a Western issue, and on the part of some activists from the global South, for whom questions of identity rather than conduct had limited relevance.<sup>56</sup> These questions of identity and terminology were further complicated by the fact that the broad based coalition in favour of the resolution had diverse aims and this led to different stances in areas such as the presence of issues of sexual health in resolutions on the right to health, as well as in questions of

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<sup>50</sup> Girard, "United Nations: Negotiating Sexual Rights and Sexual Orientation at the UN."

<sup>51</sup> See eg – IGLHRC, "Resolution on Sexual Orientation and Human Rights, United Nations Human Rights Commission: IGLHRC Campaign Dossier."

<sup>52</sup> Girard, "United Nations: Negotiating Sexual Rights and Sexual Orientation at the UN." p347

<sup>53</sup> Eric Heinze, *Sexual Orientation: A Human Right: An Essay on International Human Rights Law* (Dordrecht: Kluwer Academic Publishers, 1995).

<sup>54</sup> Fried, cited in Girard, "United Nations: Negotiating Sexual Rights and Sexual Orientation at the UN." p342

<sup>55</sup> Waites, "Critique of "Sexual Orientation" and "Gender Identity" in Human Rights Discourse: Global Queer Politics Beyond the Yogyakarta Principles."

<sup>56</sup> Ibid P 350, also Sonia Katyal, "Exporting Identity," *Yale Journal of Law and Feminism* 14 (2002). p153, p156

visibility at the Commission or the inclusion of sexuality in various other resolutions. Girard concludes that the 'focus on getting the Brazil resolution through precluded an overall debate amongst activists about whether other language or approaches would be more useful.'<sup>57</sup> Furthermore, this increased visibility and volatility of issues of sexuality, combined with the sometimes confused strategy, left campaigners in a vulnerable position in terms of the possibility of backlash: some campaigners have reported that references to sexual orientation or sexual rights in other resolutions became even harder to sustain in 2005.<sup>58</sup> We might suggest that the increased visibility of sexuality initiated by the resolution and the controversy that it attracted facilitated an increased attentiveness to the mode and meaning of inclusions of sexuality in other work. The controversy of the resolution may have begun to resonate elsewhere as a result.

While questions of terminology and identity highlight tactical and organisational questions for those working towards the implementation of the Brazilian resolution, they must also be read in the context of the earlier discussion of cultural mores and insider/outsider dualisms. In the language of both the Pakistani and African diplomats, the focus on sexual orientation represented something external to their own cultural and religious norms. The Pakistani statement in particular positions sexual orientation as not only external, but also threatening or insulting to Islam. This dynamic colours various discussions of sexual orientation at the UN as deliberations around sexuality tend to fall into particular regional divisions. While we might read some of the language used here as political rhetoric, a perhaps more interesting question to ask might concern the issue of why sexuality seems to so often divide the opinions of member states along a particular binary opposition. Or more simply – what power dynamics are at play that mean that sexuality is constituted in this way? At issue is the way in which questions of sexual orientation are very rarely *just* about issues of sexual behaviour, but also concern deeper questions of social organisation and the power to control and impact upon the mode, truth or morality of this orientation. Dismissing the Pakistani ambassador's vehement response to the Brazilian resolution as homophobia misses the opportunity to unpick what circumstances, or which operations of power led to the remarks being made in the first place.

This is perhaps why the question of terminology and positionality is such a fraught issue. Girard notes that the Brazilian delegates were surprised by the ferocity of the backlash against their proposed resolution and that for Brazil, the resolution was simply a continuation of earlier work – it represented a legitimate and logical progression.<sup>59</sup> For others, differently placed in relation to sexuality, this progression was not so clear. There is a difference, we could suggest,

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<sup>57</sup> Girard, "United Nations: Negotiating Sexual Rights and Sexual Orientation at the UN." p349

<sup>58</sup> Ibid. p351

<sup>59</sup> Girard, "United Nations: Negotiating Sexual Rights and Sexual Orientation at the UN." p342-344

between making connections between acts which are already established as human rights violations and the way in which such violations impact specifically in terms of sexuality, sexual orientation and gender identity and an outright recognition of sexual orientation as something that activates a particular set of rights or forms a coherent ground for equality based rights claims (or perhaps even a linkage between sexual orientation and sexual subjectivity). This is neither a critique of the Brazilian delegates, nor a denial that homophobia exists in many of the states that opposed the resolution (and many of those who supported it). Instead it is an attempt to highlight the way in which 'sexual orientation' is so often positioned next to 'otherness' or 'outside', in such a way as to consistently link the two. I would tentatively suggest that discussions of sexual orientation are rarely simply discussions of sexual otherness, but of a myriad of other factors related to power and 'cultural identity'. Thus to attempt to read the dynamics of such discussions is to engage with various other issues at play but often unsaid.

### *UN General Assembly*

While the Brazilian resolution was ultimately unsuccessful, it did highlight many of the issues that activists and governments were facing in relation to issues of sexuality at the UN. The fact that sexuality is now more visible within international governmental bodies, including the UN, creates new challenges and issues, but is not necessarily a step that should be undone. The lapsing of the Brazilian resolution in 2005 was not the end of the process of confronting issues of the violation of rights in relation to sexual orientation. Again, somewhat unexpectedly, in 2008, a letter was presented to the UN General Assembly condemning discrimination on the grounds of sexual orientation. Read by Argentina - although a great deal of initial support and organising had originated with France<sup>60</sup> - the statement was supported by a small majority of 66 states; it reaffirmed 'the principle of non-discrimination, which requires that human rights apply equally to every human being regardless of sexual orientation or gender identity' and expressed concern with violations of human rights and fundamental freedoms based on sexual orientation.<sup>61</sup> The statement was controversial, and was challenged by 57 states who signed an opposing statement, read by Syria, referring to the 'ominous usage' of notions of sexual behaviour and orientation that lacked 'legal foundation in any international human rights instrument.'<sup>62</sup> Debate and comments in support of Syria's statement seemed to indicate a concern that sexual orientation was not sufficient grounds for membership of a 'minority' or persecuted group, and that a focus on sexual orientation would either place too much work on

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<sup>60</sup> Sheill, "Human Rights, Sexual Orientation, and Gender Identity at the UN General Assembly." p1-2

<sup>61</sup> UN General Assembly, Sixty-third session, Agenda item 64(b). Letter dated 18 Dec 2008 from the Permanent Representatives of Argentina, Brazil, Croatia, France, Gabon, Japan, the Netherlands and Norway to the United Nations addressed to the President of the General Assembly. UN Doc. A/63/635 (2008)

<sup>62</sup> UN General Assembly Sixty-third session 70th Plenary Meeting, UN Doc. A/63/PV.70 (2008) P31

an already burdened UNGA agenda, create too divisive an approach to rights, or draw rights debates in unnecessary directions.

On first examination, the opposing letter and statements seem to make for slightly awkward reading. One might question, for example, the logic of a statement such as: 'human rights should be a unifying, rather than a divisive, factor in international relations. Such an approach means that no issue that could lead to confrontation or division among United Nations Member States should be included in the agenda'<sup>63</sup> – presumably if no confrontation between member states can be permitted to occur, then the majority of the most pressing human rights concerns should also be struck from the consideration of UN bodies, and only the most neutral and inoffensive matters could ever be addressed. One might add that such an approach would reduce confrontation, but would effectively remove the capacity of the UN to say anything at all of relevance.

This somewhat facetious observation aside however, in the statement made by Syria, and the supporting comments made by the Russian Federation and Belarus, as well as in the statement made by the Holy See, there seems to be a thematic concern with the lack of recognition of sexual orientation or gender identity in international law – the lack of clear foundations for the identities or subjectivities upon which rights claims are being made. This appears then, to be a question of legitimacy in relation to practices of positionality, or perhaps the legitimacy of the claim that sexual orientation can be a visible and nameable subjectivity from which rights language can be deployed. As a result, an affirmation of non-discrimination is made at the same time as a refusal to recognise the possibility of discrimination on the grounds of sexual orientation. Thus discrimination is to be condemned, but the very possibility or conditions for existence of a group who can be discriminated against or persecuted on the basis of their sexuality cannot be comprehended. I want to suggest that the very awkwardness of the statements stems in part from the awkward position occupied by the idea of a sexual subject or of sexuality more generally. This does not mean that I regard the Argentinian statement as anything other than a positive landmark vote and an important development in the UN General Assembly. The statement forms an important recognition of the violence experienced by those perceived to be other than heterosexual and the assertion in the face of this suffering, that there are other more important grounds for discrimination or to address the semantics of the issue at hand rather than the materiality of suffering, can only be condemned. However, these somewhat awkward arguments do expose an important problematic – sexual orientation must be constituted in a particular way in order to be assimilable within human rights norms and protections, but ironically, its very constitution in order to fit within these norms, detaches

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<sup>63</sup> UN General Assembly Sixty-third session 71st Plenary Meeting, UN Doc. A/63/PV.71 (2008) p1



‘sexual orientation’ from the lived experience of those most in need of protection. The separation of sexual orientation or LGBT as a subject group deserving of protection from the embodied materiality of lived lives opens a gap that Syria, Russia and Belarus exploit in their statements. Sexual orientation cannot be a stable subject position, it cannot capture the diversity of experience, yet it must be adapted to this format in order to communicate with existing human rights trends, this creates a fundamental ambiguity in relation to how we approach sexuality.

This is not to say that I am convinced that a genuine and sincere concern for the conceptual validity of human rights frameworks is the sole motivational factor for challenges to the presence of sexual orientation in human rights language or bodies. Sexuality sits at a challenging crossroads in relation to power, community and state authority. Ironically, the very multifaceted nature of sexuality to which the opposing statements obliquely refer, constitutes a key part of this challenge. I have suggested above that sexuality is an aleatory point that connects series, but remains shifting and indefinable. This understanding of sexuality contributes to the difficulty of accurately naming sexual orientation, or situating it in international human rights norms, but also affirms its power to disrupt and facilitate change. The Syrian statement, I want to suggest, problematises this first aspect of sexuality in order to close down the latter.

This attempt proved unsuccessful in the case of the UNGA statements: even those states who did not support the statement could not succeed in entirely removing it from the agenda as a matter of concern if not agreement. Sheill highlights the way in which criticism of the language used was followed by condemnation of ‘all forms of stereotyping, exclusion, stigmatization, prejudice, intolerance, discrimination and violence directed against peoples, communities and individuals on any ground whatsoever, wherever they occur.’<sup>64</sup> While this statement is so vague as to be little more than a meaningless platitude, it can at least be taken as an acknowledgement of the shifting position of sexual rights in the forum of the UN General Assembly. In addition to this, the Holy See delivered a statement, which while not supportive of the joint statement, condemned violence against ‘all homosexual persons’ and called for the repeal of criminal penalties for homosexual conduct.<sup>65</sup> Sheill regards the fact that ‘so many states that have stood in opposition to advocacy on human rights, sexual orientation and gender identity had affirmed universality, non-discrimination and, in the case of the Holy See, called for decriminalisation, was a success we could not have foreseen.’<sup>66</sup> In essence, there may not be agreement on the position of sexuality at the UN, but it is recognized to be an issue of import, and one through

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<sup>64</sup> Sheill, "Human Rights, Sexual Orientation, and Gender Identity at the UN General Assembly." p317

<sup>65</sup> Amnesty International, "UN: General Assembly Statement Affirms Rights for All," (2008).

<sup>66</sup> Sheill, "Human Rights, Sexual Orientation, and Gender Identity at the UN General Assembly." p317-8

which central tenets of human rights theory and practice - universality, non-discrimination, freedom from persecution – can be reaffirmed.

### *Human Rights Council*

More recently still, the Human Rights Council adopted a resolution on sexual orientation and gender identity, of the kind that failed in 2004 at the Commission on Human Rights.<sup>67</sup> The motion was introduced by South Africa<sup>68</sup>, co-sponsored by 42 other states and passed 23 to 19 with 3 abstentions.<sup>69</sup> As such, the vote was close and the motion can certainly be classed as controversial, with those supporting and opposing the resolution falling into disappointingly predictable blocs. The resolution also asks the High Commissioner to prepare a study on violence and discrimination based on sexual orientation and gender identity. Such motions suggest that, even with resistance and with the limits of terminology available, questions of sexual orientation are becoming increasingly articulable at the UN. Furthermore, while the HRC resolution is perhaps not directly comparable with statements or resolutions in the General Assembly or the judgments of the Human Rights Committee, it is interesting to note the movement from a focus on the right to privacy to a more general positioning of sexuality as a ground for non-discrimination or equality. Again, this movement is the subject of much debate - and the consequences of expressing the concerns of sexual minorities in this way are still unfolding - but it does remain interesting to note the quickly evolving positioning of sexuality within UN documents and to attempt to unpick what such evolution brings to light and what it closes off.

Despite these achievements, it is important to note that issues around sexuality in international governmental organisations remain imperfectly presented and the subject of a great deal of debate and contention. Definitions, meanings and the emplacement of sexuality within particular societies are shifting and often unclear – subject to a myriad of different factors that influence the way in which the question of sexuality is perceived. In addition to this, as the statement from Syria to the General Assembly suggests, there is still a strong feeling that sexuality is a matter of ‘culture’ as much as it is a matter of law or rights. The analysis above

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<sup>67</sup> UN General Assembly Human Rights Council 17<sup>th</sup> Session 14<sup>th</sup> July 2011 ‘Human rights, sexual orientation and gender identity’ UN Doc. A/HRC/RES/17/19

<sup>68</sup> A significant factor in the South African government’s actions here is likely the surge in local activism, particularly around corrective rape and murder of South African Lesbians as well as the Government’s poor record on issues of sexual orientation, in international arenas, despite the protections afforded to LGBT individuals in the South African Constitution. See <http://constitutionallyspeaking.co.za/lesbian-and-gay-equality-project-welcomes-sas-un-moves-on-sexual-orientation/>, <http://www.lhr.org.za/news/2011/lhr-joins-african-ngos-calling-south-africa-endorse-joint-statement-sexual-orientation-and>, [allafrica.com/stories/201106180009.html](http://allafrica.com/stories/201106180009.html) (particularly comments from Dawn Cavanagh of the Coalition of African Lesbians). All accessed 21/02/12. Kate Sheill also discusses South Africa’s ambiguous record on sexual rights at the UN in Sheill, “Human Rights, Sexual Orientation, and Gender Identity at the UN General Assembly.”

<sup>69</sup> ‘Landmark UN Vote on Sexual Orientation’ <http://www.hrw.org/news/2011/06/17/landmark-un-vote-sexual-orientation> accessed 29/11/11

highlights the difficulty, or indeed impossibility, of situating sexuality in law in a way that is clear, uncontroversial and based on solid foundations. As such, many achievements in recent years have been through a careful process of negotiation and strategic omission rather than outright confrontation.

Furthermore, LGBT rights campaigners and their allies must contend with the way in which an increased visibility of matters of sexuality can lead to the possibility of backlash or a hardening of resistance against sexual minorities. I have highlighted the way in which votes and discussions around issues of sexual orientation tend to follow relatively predictable patterns of voting. This binary, I would argue, is particularly dangerous, as it limits the possibilities for negotiation and action by dividing states into particular oppositional 'sides' along the line of sexual orientation. I am not suggesting, along with the Russian delegate to the General Assembly, that confrontation should be avoided, but, following from the analysis above, it is perhaps worth revisiting how the increased visibility and articulability of sexuality *in a particular form* at the UN can have unintended effect, or can politicise that which had been previously relatively uncontroversial. Recently, for example, a resolution condemning extra judicial killings of minorities was amended by the General Assembly's Third Committee to remove specific reference to sexual minorities. The resolution, which has included a reference to sexual orientation since 2002, was voted on each year until 2010, when the specific reference to sexual orientation was removed – this was not the first time that the removal was proposed but it was the first time the proposal was effective. In response to its removal the US proposed an amendment condemning extrajudicial killing based on sexual orientation, which was passed by the full UN General Assembly by a margin of 93 to 55 (27 abstentions, 17 absent or not voting).<sup>70</sup> This suggests perhaps, that while the possibility of backlash, and the controversial nature of the inclusion of language referring to sexual orientation is still a pertinent issue at the UN, it is possible, at least at present, to garner increasing support for sexual minorities in many arenas.

However, increasing visibility of sexual rights should not mask the issues of power that are brought into focus by controversies over sexuality. Girard mentions that Brazil was put under huge pressure as a result of the proposed 2003 resolution. This pressure might also work in reverse – it is notable, that it was the US that exerted pressure on the General Assembly to produce a comfortable majority in the vote on extrajudicial killings. While we may welcome and celebrate the increasing support that powerful states such as the US are showing for LGBT rights, this support increasingly implicates LGBT issues within a problematic framework of

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<sup>70</sup> 'Civil Society Successfully Pressures Governments to Reverse Discriminatory Vote at the UN' [www.iglhrc.org/cgi-bin/iowa/article/pressroom/pressrelease/1291.html](http://www.iglhrc.org/cgi-bin/iowa/article/pressroom/pressrelease/1291.html) accessed 6/12/2011

global power relations. Furthermore, the repeated division of states into those who are 'for' or 'against' measures in favour of sexual minorities is likely to harden oppositions or to reinforce essentialist or strategically essentialist definitions of sexuality, sexual orientation or sexual minorities. Put more simply, by working within and in relation to UN power relations and dynamics, LGBT issues are increasingly shaped and articulated as part of these power relations and dynamics and thus become more rigidly defined and restricted in terms of available action.

This division is problematic as, although campaigning around sexuality may require definition and clarity<sup>71</sup>, such clarity works firstly to diminish the relevance and usefulness of human rights gains in relation to sexuality once they are applied anywhere beyond the UN and secondly, leaves us trapped in an oppositional binary that solves little. As Rao, suggests in his analysis of Massad's *Desiring Arabs*, while it may be true that LGBT as a label or a lifestyle may be less relevant in the Middle East than elsewhere, 'in criticising cosmopolitan rescue politics and its local interlocutors, Massad slips into a reinforcement of communitarian authenticity narratives that police how sexual preferences ought to be expressed.'<sup>72</sup> The establishing of dichotomies that set 'Western' sexuality against an 'authentic' sexuality of a particular area may be a means of critiquing the power dynamics at play in transnational discourses of sexuality, but it does little to deconstruct modes of organisation through which it is possible for these dynamics to play themselves out and at the same time risks that we deny agency and make sweeping statements and normative claims about how non-heterosexuality ought to be expressed within particular regions.

### **Problems of naming and nomenclature and the production of meaning in sexual orientation and law**

Much of the analysis above implicates sexuality in a highly political process, both in terms of the operation of visible displays of power, diplomacy, political pressure and negotiation and in terms of the more subtle flow of discursive, productive power through which the categories of sexuality and sexual belonging come to be understood. Part of the problem however, lies in the fluid nature of sexuality as a structural or structuring matrix. I have suggested that sexuality can be viewed as occupying the empty square, or several positions at once - a position that is particularly difficult to pin down into any rights based discourse. The remainder of this chapter attempts to explore this dynamic, in order to draw out some of the paradoxes and questions that currently tend to inhere in issues of sexuality and rights.

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<sup>71</sup> Waites, "Critique of "Sexual Orientation" and "Gender Identity" in Human Rights Discourse: Global Queer Politics Beyond the Yogyakarta Principles."

<sup>72</sup> Rao, *Third World Protest*. p177

An attempt to define the terms used to refer to ‘non-heteronormativity’ reveals the very complexity of the subject at hand: labels such as homosexual, gay, LGBTTTQQI<sup>73</sup>, men who sleep with men (MSM) and queer are all weighted terms, carrying a great deal of meaning that is often highly context-dependent. Although all of these names refer in some way to individuals who occasionally or primarily engage in non-normative sexual behaviours or adopt non-normative gender identities or behaviours, each one frames these non-normative behaviour/identity clusters in slightly different ways allowing for a different interpretation by each reader in relation to their own understandings of normativity, sexuality and selfhood. These names and labels, while increasingly transnationally recognised, might also be supplemented by terms that have meaning in their specific cultural locations – we might ask, for example, whether terms such as *hijra*, *kothi*, *lesbi*, *takatapui*, among many others, should also be included here. In general, I attempt to use each term in the way that appears most appropriate in the given context, but do so with an awareness of the complexity and politics of meaning and interpretation relating to the language of ‘alternative sexualities’.

Part of the problem of nomenclature arises from the fact that sexuality cannot be reduced to one single discourse or framework of understanding. This argument draws on Wendy Brown’s critique of MacKinnon: Brown argues that MacKinnon reduces gender to one single social relation – that of sexuality.<sup>74</sup> Thus, every single feminine injustice is related back to sexuality - to the eroticisation of dominance and submission that creates gender. Brown suggests instead that gender does not and cannot devolve on a single social relation – sexuality – but many social relations, including, but not limited to, discourses organising motherhood, race, philosophical truth, citizenship, class, heterosexuality and many others.<sup>75</sup> Similarly, sexuality is about the erotic and about power but it also speaks to discourses of truth, class, race, nation, gender, desire and more. Sexuality cannot be reduced to a point where it is readable along a single social relation or a single set of interpretive terms. Instead many different factors feed into the way different individuals and groups understand, interpret and reinterpret sexuality. It is therefore unsurprising that nomenclature is such an issue. Sexuality can speak to many different aspects of our being and selfhood as individuals and as members of communities, in large part, because it operates at a nexus of many different prolongations, permutations and lines of flight.

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<sup>73</sup> Lesbian, Gay, Bisexual, Transgender, Transsexual, Queer, Questioning, Intersex - this acronym is an extended form of the LGBT acronym, which is itself an extended form of the LGB abbreviation. The way in which this abbreviation continues to grow might perhaps be seen as a symptom of the problem of naming discussed in this section.

<sup>74</sup> Wendy Brown, *States of Injury: Power and Freedom in Late Modernity* (New Jersey: Princeton University Press, 1995).

<sup>75</sup> Ibid.

I am arguing therefore that sexuality is implicated within a number of different assemblages as the empty square or aleatory point that brings series into resonance. Thus, in the context of LGBT nomenclature, as sexuality circulates, it allows us to grasp a surface of sense at which expression (LGBT, queer, MSM etc.) and content (series and selections of behaviour, action, pre-identitarian singularities, affect etc.) meet. Yet as Lampert argues, in Deleuze and Guattari's scheme, expression and content cannot be understood as a simple dichotomy of expression vs. content or of idea vs. material reality. 'Expressions do not merely represent contents epiphenomenally; rather expressions and events interpret each other at the level of form and interact causally with one another at the level of matter.'<sup>76</sup> What is significant here is the rejection of pre-given or a priori systems of signs or structures through which the world is ordered. Deleuze argues against a system in which experience or perception are structured in advance, and instead looks to the production of relations.<sup>77</sup> The abstract machine, or the diagram of the assemblage by which form and content are constituted and conjugated is not merely linguistic or descriptive, but constructive: 'The diagrammatic or abstract machine does not function to represent, even something real, but rather constructs a real that is yet to come, a new type of reality....Everything escapes, everything creates – never alone, but through an abstract machine that produces continuums of intensity, effects conjunctions of deterritorialization, and extracts expressions and contents.'<sup>78</sup>

The key point here, is the argument that language alone does not constitute an abstract machine. Language does not 'create' or even accurately represent content: "'Behind" statements and semioticizations there are only machines, assemblages and movements of deterritorialisation that cut across the stratification of the various systems and elude both the coordinates of language and of existence.'<sup>79</sup> However, this argument complicates rather than simplifies the issue of nomenclature and sexuality, as while we might acknowledge that 'the world is prior to language in the same manner as the world is prior to law'<sup>80</sup>, we must also acknowledge that language, like law, is prescriptive: 'Language defines or sets the limits of our world. However there is life outside of language, in problems and concepts - problems always lie beyond the realm of the disciplines and beyond its common words'.<sup>81</sup> Deleuze's transcendental empiricism is a commitment to pre-linguistic difference which should not be subject to pre-existing criteria.<sup>82</sup> As such, 'language is not life, it gives life orders.'<sup>83</sup> A statement

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<sup>76</sup> Jay Lampert, *Deleuze and Guattari's Philosophy of History* (London: Continuum, 2006). p77

<sup>77</sup> Claire Colebrook, *Deleuze: A Guide for the Perplexed* (London: Continuum, 2006).60-61

<sup>78</sup> Gilles Deleuze and Félix Guattari, *A Thousand Plateaus*, trans. B Massumi (London: Continuum, 2004).p157

<sup>79</sup> Ibid. p163-4

<sup>80</sup> Martin Hardie, "Deleuze: "Had I Not Done Philosophy I Would Have Done Law", " *International Journal for the Semiotics of Law* 20 (2007). p87

<sup>81</sup> Ibid. p87

<sup>82</sup> Colebrook, *Deleuze: A Guide for the Perplexed*. p42

imposes structure upon a series, the process of naming is a process of closing off, of imposing a structure upon matter. We can trace the implications of this in the debates surrounding sexuality at the UN. At stake here is not simply sexual rights, but the deeper question of the way in which sexuality is named, known and structured at the UN – and thus, the way in which complex, pre-linguistic and pre-individual singularities pertaining to sexuality are expressed as identities (or illegitimate identities) that are comprehensible within the larger UN rights system.

Of further significance here, is the reciprocal production of meaning: meaning is a surface effect, a distribution of sense at the intersection of content and expression. At issue then is the relationship between forms of content and forms of expression and the interaction between the two as a moving site of the production of meaning. Language stabilises and restricts, yet language is not unchanging. 'Before the actualized and stratified worlds of language and laws there are intensive processes of ontogenesis immanent and autonomous in matter in a field of emergence. Matter expresses itself, matters of expression pass back into matter, form settles into substance, and substance overtakes forms, expression folds over contents, and contents overflow expression.'<sup>84</sup> From this perspective we can appreciate both why naming is problematic, and why no single name will ever be sufficient. Meaning here is not the identification of a single principle or even foundational identity or subjectivity<sup>85</sup> but is instead a constant production and perpetual becoming: as such, of most concern are the gaps and the fractures in the production of meaning and identity. We should be interested here not in the location of a totality or a foundation for identity, but in the possibility of pragmatic, dissipative structures. 'Thought, in other words, is not directed toward an eventual specified end, but rather remains open, dialogical, creative, and evolutionary directed toward an unspecified becoming.'<sup>86</sup> Thus, any name given to a set of sexual practices, sexual orientation or expression of sexuality must necessarily always be temporary and limited: 'we are never signifier or signified. We are stratified.'<sup>87</sup> LGBT, queer, gay, lesbian and other terms all capture and stratify some part of sexuality but leave other aspects outside this stratification and open to recapture or re-stratification and expression in a different form.

Two further points can be drawn out here. The first relates to Deleuze's insistence that we should not simply accept the existence of a system of signification, regime of signs or language, but examine the conditions under which it is produced and experienced. The further and more

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<sup>83</sup> Deleuze and Guattari, *A Thousand Plateaus*. p84

<sup>84</sup> Ronnie Lippens and James Murray, "Introduction: Deleuze and the Semiotics of Law," *International Journal for the Semiotics of Law* 2007, no. 20 (2007). p5

<sup>85</sup> Deleuze, *The Logic of Sense*. p83

<sup>86</sup> Dragan Milovanovic, "Diversity, Law and Justice: A Deleuzian Semiotic View of 'Criminal Justice'," *International Journal for the Semiotics of Law* 20 (2007). p71

<sup>87</sup> Deleuze and Guattari, *A Thousand Plateaus*. p75

technical point to draw however, concerns the relationship between movement and meaning. If language (or law, or a regime of signs or a structure of signification) tends to constitute matter into identifiable systems – into relatively stable blocks of space time - the existence of these sets must be understood simply as subdivisions of the whole of duration/virtuality more or less contracted. ‘These sets, however, are insistent illusions that we automatically perceive and cannot eradicate – and for good reason, since they are approximations of realities that are useful for our survival in the world.’<sup>88</sup> Of interest here, are the relations between terms and between these closed sets and open wholes. Deleuze argues that the whole (duration) may be defined as ‘the whole of relations’<sup>89</sup> and further that relations are external to their terms: they ‘do not belong to bodies, but to the whole, as long as one does not confuse the whole with a closed set of objects.’<sup>90</sup> In his work on Cinema, Deleuze examines the way cinematic products such as a montage allow us to think or perceive the open whole of duration as opposed and relative to closed sets and structures. Significant to our argument here however is the wider point that Deleuze is making about relations and movement in the context of this open whole. The movement of bodies in space is not the movement of a single body along a linear trajectory, but the connection of different movements within a dynamic, open ended and changing whole. That is, the movement of the parts extends into the whole: movement is not a change within space but a changing whole. ‘Movements are the production of change, such that each movement is already a change in everything else that moves.’<sup>91</sup>

I have spent some time exploring these questions of expression, content and movement in an attempt to highlight the complexity of the process of naming. The point here is that an attempt to identify a permanent or foundational definition of sexual orientation, sexual identity or sexuality is a futile task: the names used, the structures or sets constructed are simply singular iterations of the relationship between expression, form and content, relevant to the particular context in which they are expressed. Moreover, neither the grouping of terms, nor the actions and movements of bodies can be examined in isolation: the expression of sexuality as a set of relations will impact upon the whole of duration: the whole of movement of bodies in space. Thus in Zimbabwe, when Mugabe attacked homosexuals as worse than pigs and dogs, he did not just express his own or the state’s position on homosexuality, nor did he simply provoke publicity and a more coherent concentrated organising in favour of gay rights in Zimbabwe, he also introduced the terminology of ‘homosexuality and heterosexuality’ to the wider population, inducing individuals who had not previously considered themselves in these terms to adopt and

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<sup>88</sup> Ronald Bogue, *Deleuze on Cinema* (London: Routledge, 2003).p26

<sup>89</sup> Gilles Deleuze, *Cinema 1: The Movement Image*, trans. Hugh Tomlinson and Barbara Habberjam (London: Athlone Press, 1986). p21

<sup>90</sup> Ibid. p21 Bogue, *Deleuze on Cinema*. p26

<sup>91</sup> Colebrook, *Deleuze: A Guide for the Perplexed*. p45



engage with a particular set of structures and labels concerning sexual identity.<sup>92</sup> Mugabe's statements with regard to homosexuality put the terms used into resonance in such a way as to provoke a more general reorientation of how Zimbabweans, both gay and straight, approached and conceived of sexual identity and subjectivity.

The question then is how might law as a regime impact upon this process. The starting point must perhaps be a recognition that law itself is not formed upon a transcendent plane, but exists in the material processes of life – itself a form of open ended perception and production (this point is discussed further in Chapter Five). For Deleuze, the law administers a structure of 'illegalisms', and thus our focus must be not simply upon the procedure of law, but the pragmatics of law and rights: the wider world within which law operates and acts. Milovanovic argues that in this respect, Deleuze and Guattari advocate 'not a stasis, but far-from-equilibrium conditions within which intensive processes produce not only relatively autonomous assemblages and abstract machines that are the workings of desire itself, but a constant breaking down (deterritorialization) of the present in preparation for a continuously evolving, more fulfilling future.'<sup>93</sup>

It is with this complexity in mind that we might begin to examine the law's role in the privileging and production of particular systems, labels and identities. Phillips makes this point in relation to the idea of homosexuality as a 'white man's disease' in Zimbabwe. Referring specifically to criminal convictions for 'unnatural offences', he notes that between 1966 and 1994 all but three of the convictions in the higher courts have involved white men. No other sexual offence shows the same racial bias. However, this does not mean that only white men will engage in same sex behaviour. Instead, Phillips argues it is likely that inequalities in socio-economic status led to a situation in which white men were more able to appeal their convictions in higher courts, as white men were more likely to be able to afford the legal representation needed in these higher institutions.<sup>94</sup> Black men accused of the same offences would be less likely to have access to such resources and as a consequence, cases of black men's same sex-behaviour would be heard in the lower magistrates' courts, the records of which are not generally available.<sup>95</sup> Thus, the issue is not one of racially-based behaviour, but one of socio-economic power that facilitates visibility. But, as Phillips concludes,

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<sup>92</sup> Matthew Engelke, "'We Wondered What Human Rights He Was Talking About': Human Rights, Homosexuality and the Zimbabwe International Book Fair," *Critique of Anthropology* 19, no. 3 (1999).

<sup>93</sup> Milovanovic, "Diversity, Law and Justice: A Deleuzian Semiotic View of 'Criminal Justice'." p78

<sup>94</sup> Oliver Phillips, "Zimbabwean Law and the Production of a White Man's Disease," *Social and Legal Studies* 6, no. 4 (1997).

<sup>95</sup> Ibid.

'[t]he end result of this disparity in convictions is that it contributes to a discourse of discrimination which produces homosexuality as a 'white man's disease'. There is no doubt that some black Zimbabwean men do have sex with each other, and, as with anyone else, this is carried out with varying degrees of furtiveness and openness by men occupying a variety of social positions. Yet the cases which go through to the higher courts are predominantly those which involve the participation of white men. This means that the cases passing before the senior judiciary, receiving publicity in the media, being recorded in public law reports, coming to the attention of government, and featuring in the market-place discussions of an insatiably curious populace are those which involve the participation of a white man. Public discussion of homosexuality becomes fuelled with racial epithets, and the primary definition of the issue includes the presence of a white man and the relative obscurity of the black man'.<sup>96</sup>

This is a clear example of the disciplinary, regulative power of the law to create 'the homosexual' as a particular (white) individual and constitute homosexuality as a white 'disease' in contrast to (presumably) black African heterosexuality. This creation by the construction of particular binaries is not an isolated occurrence in law - De Vos makes the point that law's role in producing homosexuality often occurs through its negation - that law '[c]ame to valorise the model of martial bond, the privileging of the conjugal sexuality and the denial of legitimacy to other forms of sexuality outside the heterosexual matrix. It is via this negation that the law has played a role in constructing homosexual identity.'<sup>97</sup> Homosexuality is made visible as the 'other' to what is desirable and normative. Thus, through both juridical and disciplinary means, homosexuality and the law interact and react, in the sense that the law works to ban behaviours deemed unnatural or distasteful, which are rendered deviant and marginal in this process. Law, therefore, does not objectively operate on an already established homosexual identity, but actively works towards its construction and conceptualisation in particular terms. Homosexuality is positioned in a particular relation to law - this positioning facilitates the increased visibility of homosexuality and in so doing it contributes to a process in which the homosexual is created and refined.

It is important to note here that the law *fuels* rather than singlehandedly creates this discourse - sexuality is a complex production, influenced by many discourses and desires, and attempts to find one foundational truth of its production are not generally very helpful. Nonetheless, the law will sometimes make a claim to the ability to provide a supposed truth of sexuality - and to attach a particular meaning and morality to sexual behaviours. This is problematic because although law does not produce sexuality alone, or comprehend sexuality in its entirety, law

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<sup>96</sup> Ibid.

<sup>97</sup> Pierre De Vos, "On the Legal Construction of Gay and Lesbian Identity and South Africa's Transitional Constitution," *South African Journal on Human Rights* 12 (1996).

remains a powerful discourse. Legal recognition can publicly legitimise or delegitimise certain behaviours and thus, implicitly, certain identities.

Phillips and De Vos both use examples from Southern Africa – specifically Zimbabwe and South Africa. Similar, although not identical, operations of productive power might also be traced in international law. It is interesting to note for example, the way in which many of the earliest cases relating to sexuality and rights at an international level were heard in the European Courts. It is perhaps more than coincidental that while these courts were not always sympathetic to the petitions of sexual rights activists, the configuration of sexuality, subjectivity and rights within European historical, political and legal imaginaries made the constitution of a legitimate sexual subject a significant possibility. Sweibel notes that within the EU, the concept of sexual orientation seems to have been accepted and even included in treaties, while at the UN, the concept remains highly controversial. She highlights a number of factors that have contributed to this – including co-tailing on other anti-discrimination law, better resources and strategies and a political climate that was generally more welcoming. Beyond this however, is the suggestion that the demands of sexual minorities could simply be ‘framed’ more easily within the EU structure perpetuating a reciprocal discourse which both emplaces but then essentialises the position of sexuality within EU human rights law. Most notable in relation to European sexual rights is the way in which rights bearing citizens of the EU are defined primarily in economic terms – citizens are economic actors who enjoy core rights.<sup>98</sup> This focus shapes the way in which minority rights are articulated. For example, Stychin notes that the original motivation for sexual equality rights was not necessarily a concern for women’s rights so much as a desire to foster equal conditions in relation to the costs of production across the European Economic Community.<sup>99</sup> Arguments concerning the need to create a level playing field in the labour market have been made specifically in relation to sexual orientation issues have been made in cases such as *P. v. S. and Cornwall County Council*<sup>100</sup>, *Grant v. South West Trains*<sup>101</sup> and in the International Lesbian and Gay Association’s (ILGA) campaign for freedom of movement of same sex couples around the European Union.<sup>102</sup> As Stychin suggests ‘arguments for sexual equality are often normatively grounded in part in the importance of rights as a means to ‘perfect’ competition in the labour market.’<sup>103</sup> Thus, the structure of the EU system makes it relatively easy to ‘name’ or to make visible sexual orientation rights, but at the same time this process of naming essentialises and crystallises notions and norms of sexuality and

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<sup>98</sup> Mark Graham, "Gay Marriage: Whither Sex? Some Thoughts from Europe," *Sexuality, Research and Social Policy: Journal of NSRC* 1, no. 3 (2004). p26

<sup>99</sup> Carl F. Stychin, "Sexual Citizenship in the European Union," *Citizenship Studies* 5, no. 3 (2001). p292

<sup>100</sup> *P. v. S. and Cornwall County Council* ECR C-13/94 [1996] ECR I-2143. Cited in *Ibid* p 293

<sup>101</sup> *Grant v. South West Trains* ECR C-249/96 [1998] ECR I-621 Cited in *Ibid* p293

<sup>102</sup> Graham, "Gay Marriage: Whither Sex? Some Thoughts from Europe." p26

<sup>103</sup> Stychin, "Sexual Citizenship in the European Union." p293

addresses them through discourses of economic citizenship in a way that is not necessarily particularly accurate.<sup>104</sup>

This conceptual confusion is mirrored in discussions at the UN – I have argued, for example, that processes of naming, making visible and naturalising, reinforce particular structures or systemic binaries. Girard uses Butler to question whether part of the Holy See's objection to claims based on gender identity or gender expression might be related to an understanding that these claims could bring already normalised gender categories into question.<sup>105</sup> In essence, we might suggest that if we read sexuality as inhering within a number of different discourses, power formations, conceptual frameworks, or series and as bringing all of these series into resonance with each other, we can begin to understand the potentially disruptive force that sexuality can have. Potentially, sexuality can operate as disjunction, or as a site of productive difference and differentiation. Sexuality can connect with a number of different flows, machines, and assemblages, or can facilitate the connection of different assemblages with each other. In this modality then, sexuality is a productive but always somewhat uncontained force or flow – a disjunctive synthesis. As Colebrook points out however, it is possible to use disjunctive synthesis illegitimately – in a transcendent form that insists that one submits to one particular system of classification or thinking and adheres to the strictures of identifying with particular signifiers.<sup>106</sup> In Girard's example, the Holy See could be seen to be making an illegitimate use of the disjunctive synthesis, in that it attempts to close down the possibilities of sexuality or gender, and their openness to becoming. I would suggest that many of the debates in the UN are marked by such dynamics. However, it should also be highlighted that it is not only those who oppose the furthering of sexual rights who are capable of performing this transcendent disjunction: those who predict or prefer only one single trajectory of (often rights based) sexual liberation (a teleology of sexuality) could be seen as performing a similar action – closing down rather than opening up possibilities for change and connection beyond the already planned, articulated and expected. In one sense, it is easy to understand *why* such movements occur – the logic of classification, binaries and contradiction is a powerful model of governance and resistance: Deleuzian articulations of flow and change are much less easily articulated into programmes of action, particularly in our international political and legal arenas. However, it appears that in relation to sexuality at least, political action that falls into transcendent disjunction in this way tends to lead to unproductive binary oppositions, which are increasingly

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<sup>104</sup> Swiebel, "Lesbian, Gay, Bisexual and Transgender Human Rights: The Search for an International Strategy."

<sup>105</sup> Girard, "United Nations: Negotiating Sexual Rights and Sexual Orientation at the Un." p335. This is not the only instance of the Vatican's engagement with gender categories or the 'disruption' of a women's 'natural' role as a carer and mother. Similar concerns are reflected in the 2004 *Papal Letter to Women*. See Patrick Hanafin, *Conceiving Life: Reproductive Politics and the Law in Contemporary Italy* (Aldershot: Ashgate, 2007). p7

<sup>106</sup> Claire Colebrook, "Disjunctive Synthesis," in *The Deleuze Dictionary: Revised Edition*, ed. Adrian Parr (Edinburgh: Edinburgh University Press, 2010). p80-1

hardened with each repetition of a statement, a vote or a resolution. As Deleuze and Guattari argue in *Anti-Oedipus*,

‘no “gay liberation movement” is possible as long as homosexuality is caught up in a relation of exclusive disjunction with heterosexuality, a relation that ascribes them both to a common Oedipal and castrating stock, charged with ensuring only their differentiation in two non communicating series, instead of bringing to light their reciprocal inclusion and their transverse communication in the decoded flows of desire (included disjunctions, local connections, nomadic conjunctions). In short, sexual repression, more insistent than ever, will survive all the publications, demonstrations, emancipations and protests concerning the liberty of sexual objects, sources and aims, as long as sexuality is kept - consciously or not - within narcissistic, Oedipal, and castrating co-ordinates that are enough to ensure the triumph of the most rigorous censors.’<sup>107</sup>

### **Sexual orientation rights and power: Rights as a practice of governance and control**

Unfortunately, it is not possible to simply remove the process of naming. As Reynolds notes, the deployment of a name or ‘identity’ serves a double function: on one hand it can work to ‘define and reinforce social identities, subjective territories and societal structures’<sup>108</sup>, on the other, ‘subjects can also deploy proper names via the naming-function to achieve agency and furnish themselves mobility of identity, thereby exposing the uncontainable nature of the subject vis-à-vis taxonomies that serve state machinery and for which proper naming is fundamental.’<sup>109</sup> Much work on LGBT rights reflects this problematic – as Girard notes: “To advance a progressive agenda on sexuality, multiple parallel strategies are needed. The battle for explicit words has to continue because those words are essential to combating discrimination and violence. But other approaches must also be taken.”<sup>110</sup> Names are both liberating and restricting – particularly in the eyes of the law, which seeks to make subjects visible, to know and to regulate them in a particular way.

Braidotti traces this relationship between seeing, knowing and control in Western thought arguing that from Plato onwards, seeing has become synonymous with knowing, and knowing something is a key factor in its regulation and control.<sup>111</sup> In this way, she highlights the double-

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<sup>107</sup> Gilles Deleuze and Félix Guattari, *Anti-Oedipus: Capitalism and Schizophrenia* (London: Athlone Press, 1984). p350-1

<sup>108</sup> Bryan Reynolds, *Transversal Subjects: From Montaigne to Deleuze after Derrida* (Basingstoke: Palgrave Macmillan, 2009).p64

<sup>109</sup> Ibid

<sup>110</sup> Girard, "United Nations: Negotiating Sexual Rights and Sexual Orientation at the UN."p356

<sup>111</sup> Rosi Braidotti, *Nomadic Subjects: Embodiment and Sexual Difference* (New York: Columbia University Press, 1994). p204, Rosi Braidotti, "Posthuman, All Too Human: Towards a New Process Ontology," *Theory, Culture and Society* 23, no. 7-8 (2006). p204

edged sword for those activists who seek to work within the parameters of the law and particularly the rights discourse. Thus, visibility and coherence around a particular, claimed, knowable identity gives a much more powerful base by which individuals can occupy space, make claims to rights and demand inclusion within a political body. However, doing politics in such a way demands that groups are recognisable and positioned in a particular fashion – often in a fashion that is outside their control. This is why Emma Henderson questions the wisdom of appealing to international rights bodies in relation to Tasmanian gay rights activism: in doing so, gay rights are positioned as an outside force, legislated for, at least in part, by external authorities.<sup>112</sup> Thus, gay people remain invaders, impure and tainting authentic Tasmanian belonging; gay subjectivity becomes a closed off subjectivity, one that is potentially antithetical to Tasmanian subjectivity.

Yet appeals to the law and to the discourse of human rights continue, and continue successfully. There are increasing examples of the way in which, despite controversy, notions of sexual orientation are being integrated into working discourses of the UN. Working within the parameters of rights claims remains an important strategy - the law remains a powerful discourse if it can be usefully harnessed. Furthermore, as Douzinas argues, legal recognition, or legal legitimisation *can* have a powerful psychological impact, as it has the power to position subjects as legitimate and accepted members of a citizen body.<sup>113</sup> In essence it brings them from marginal, semi-legitimate or semi-hidden existences and recognises their right to belong as full subjects, regardless of sexuality. De Vos captures the importance of this recognition when he quotes a black drag queen at the 1994 gay pride march in Johannesburg: “Darling, it means sweet motherfuck-all. You can rape me, rob me – what am I going to do when you attack me? Wave the Constitution in your face? I’m just a nobody black queen [...] But you know what? Ever since I heard about that Constitution, I feel free inside.”<sup>114</sup> Similarly, O’Flaherty and Fisher quote the response of one online commenter to the launch of the Yogyakarta Principles: “I am now, under International Human Rights Law, officially human. And yesterday, I wasn’t.”<sup>115</sup>

Such interventions offer powerful anecdotal evidence for the significance of a rights or recognition based politics. Yet, these successes still raise the question of what the impact of a politics that is specifically of rights and sexual orientation will be. Recognition is significant, but there remains a question of how far rights are able to secure the material well-being of excluded

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<sup>112</sup> Henderson, “‘I’d Rather Be an Outlaw’: Identity, Activism, and Decriminalization in Tasmania.”

<sup>113</sup> Costas Douzinas, *The End of Human Rights* (Oxford: Hart, 2000). P271-295

<sup>114</sup> From the 1994 gay pride march, Johannesburg. Quoted by Mark Gevisser in ‘Cry Freedom’ July 1995 edition of *Attitude*. Cited in De Vos, “On the Legal Construction of Gay and Lesbian Identity and South Africa’s Transitional Constitution.”

<sup>115</sup> Michael O’Flaherty and John Fisher, “Sexual Orientation, Gender Identity and International Human Rights Law: Contextualising the Yogyakarta Principles,” *Human Rights Law Review* 8, no. 2. p40

groups or resolve material conflicts.<sup>116</sup> Perhaps the best question to ask in relation to such complexities is posed by Seckinelgin: 'what sort of politics does the LGBTI [Lesbian, Gay, Bisexual, Transgender and Intersex] approach operationalize for recognition?'<sup>117</sup> Or, what kind of politics does LGBT language make possible? In essence, what kind of structures, binaries or analogies does it set up – and what is the impact of such structuring processes? There are numerous examples of the impact of binary divisions in this area, but we should also perhaps note a tendency in some, although not all, spheres of analysis to analogise sexuality with religion or ethnicity in order to claim particular rights.<sup>118</sup> Such comparisons may be a useful gloss, but at the same time raise questions of what assumptions such analogies must make in order to formulate useful comparisons. In particular, such comparisons close down the space for intersectionality or analysis at the level of multiple points of inclusion or exclusion. In a similar vein, we might ask what assumptions are made when sexual minorities are viewed through a lens of equality or included/excluded as legitimate citizens. By constituting a binary of included/excluded and normal/other, we reinforce both the structure of the binary and the assumption of comparability between each side while at the same time creating a mutual dependency between each identified dichotomous name. What must be interrogated therefore is the question of whether we are defining difference in terms of analogy or resemblance, rather than on its own terms, and what the consequences of doing this are.<sup>119</sup>

My suggestion in response to these questions would be that the politics of rights and repetition outlined above facilitates a process of representation rather than repetition in a Deleuzian sense in which repetition constitutes not the reoccurrence of the same thing multiple times, but the process of affirming the new, discovery and experimentation through beginning again.<sup>120</sup> In this modality of representation, rights work through binaries, analogies or generalities, and in doing so condemn singularities (or subjects of law) to resemblance or recognition rather than their repetition as actualised singularities. 'As an empty form of difference, an invariable form of variation, a law compels its subjects to illustrate it only at the cost of their own change.'<sup>121</sup> Law here closes down the potentiality for change, for repetition, discovery or experimentation in a creative way, it is 'repetition of the Same, explained by the identity of the concept or

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<sup>116</sup> Patrick Hanafin, "Refusing Disembodiment: Abortion and the Paradox of Reproductive Rights in Contemporary Italy," *Feminist Theory* 10, no. 2 (2009).p239

<sup>117</sup> Hakan Seckinelgin, "Global Activism and Sexualities in the Time of HIV/AIDS," *Contemporary Politics* 15, no. 1 (2009). p110

<sup>118</sup> We might point to the way that sexuality or sexual orientation is often included in legislation as one characteristic alongside gender, religion, ethnicity, age or disability through which individuals can experience discrimination. This is not necessarily a critique of this form of expression, but we should perhaps be aware of the consequences of bringing such characteristics into this particular frame of proximity.

<sup>119</sup> Rosi Braidotti, *Metamorphoses: Towards a Materialist Theory of Becoming* (Cambridge: Polity Press, 2008). p81.

<sup>120</sup> Adrian Parr, "Repetition," in *Deleuze Dictionary*, ed. Adrian Parr (Edinburgh: Edinburgh University Press, 2010). p225

<sup>121</sup> Gilles Deleuze, *Difference and Repetition*, trans. P Patton (London: Continuum, 2011).p2

representation'<sup>122</sup> rather than repetition that 'includes difference, and includes itself in the alterity of the Idea, in the heterogeneity of an "a-presentation".'<sup>123</sup> Deleuze is highly critical of human rights in this sense – in particular he denigrates those who 'are content to remind us of rights, and recite lists of human rights: 'It's not a question of applying human rights. It is one of inventing jurisprudences where, in each case, this or that will no longer be possible.'<sup>124</sup> In this sense then, rights that reproduce binaries work by analogy and seek to bring the subject within an already established body of law by making her as similar as possible to those subjects who are already the bearers of rights. In doing so they operate in a negative rather than a positive power relation – they close down rather than open up new potentials for sexuality and connections that can resonate by and through sexuality.

Human rights as I have outlined in the first section of this chapter are deeply embedded in this process and there are a number of further critiques that can be made using this as a point of departure. For example, Wendy Brown might be seen to be making a similar point to a Deleuzian critique on the grounds of resemblance over repetition of difference when she suggests that differences are neutralised in circulation through liberal administrative discourse and through their ordination in law. Disciplinary power operates in such a way that people are reduced to definition through these differences, which are then written into law and become modes of control. All differences become 'equivalent' in that they are all defined through their failure to be some kind of ideal-type norm. Thus not only are identities essentialised, written into law and allowed to become part of the regulative framework, but in this way, the idea of what constitutes a 'normal' existence for any given society is also reinforced. The law is brought in to manage otherness, but in doing so identities become reified and individuals are divided into particular identity based subjectivities and subject groups.<sup>125</sup> Such an approach does not encourage reaching out and connecting across recognised difference, but reinforces division and separation into spheres of, at best, toleration. As a consequence, difference is rendered both eternal and something that can be papered over and ignored – we are in no way called on to interrogate *why* we position ourselves or others as 'different'.

Thus, we move from the question of binaries and divisions with a particular framework of law (Argentinan Statement vs. Syrian Statement, Toonen v Australia, cultural rights v sexual rights) to the question of the constitution of that framework itself and the role of law in reinforcing

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<sup>122</sup> Ibid p27

<sup>123</sup> Ibid p27

<sup>124</sup> Deleuze, Gilles, *On Human Rights* L'Abécédaire de Gilles Deleuze, avec Claire Parnet, Vidéo Éd. Montparnasse, 1996 at [www.generation-online.org/p/fpdeleuze10.htm](http://www.generation-online.org/p/fpdeleuze10.htm) accessed 12/12/2011

<sup>125</sup> Brown, *States of Injury: Power and Freedom in Late Modernity*. p66



already existing structures, nomenclature and power dynamics. Brewster Kneen has elaborated on this point, arguing that:

'The advocacy and pursuit of rights, both individual and corporate, is consequently bound to fragment a society into competing interests (echoes of class struggle), destroying any sense of solidarity and ultimately, destroying the very fabric of society itself'.<sup>126</sup>

Furthermore, Kneen argues, as rights are primarily granted by the state, responsibility for justice and for the granting of rights is shifted further towards state (or occasionally international) institutions. These institutions become the focus of all claims to the redress of injustices, thus reinforcing their institutional power. This discursive repositioning of justice means that individual or community responsibility for justice is lessened by the very discourse and bodies that claim they are able to grant it. In terms of international law, he cites Falk's highly critical commentary:

'It is the weak, the leaders of the Third World countries, who are subject to this legal framework of the United Nations. The strong are exempt, and that goes back to the end of the Second World War. US military people were not prosecuted for using the atomic bomb in Hiroshima and Nagasaki, while the Japanese and the Germans were held responsible for war crimes...International life...is characterized by pervasive double standards. It goes back to the UN Charter itself, which gives the five permanent members of the Security Council a veto. And that veto, in effect, is saying that the UN Charter and international law do not apply to the powerful. The charter is a regulatory framework for the weak. The strong have impunity and exemption.'<sup>127</sup>

Law here operates as a 'structure of illegalisms'<sup>128</sup> and in their administration and formalisation, control is maintained by governmental regimes. This view of law and rights in international discourses is highly critical and perhaps one-sided given the complex multifaceted nature of rights that I am trying to explore in this thesis. However, it is worth taking these criticisms seriously as the lived reality of some, if not all who live under human rights regimes. I would suggest that Kneen and Falk's critiques provide interesting insight into why sexuality may prove so contentious: if, as I have suggested, sexuality does sit at a point of challenge to particular norms, normative structures and deeply regarded cultural mores, then using human rights discourse, and particularly the human rights instruments of the UN - which can be construed as the tools of the powerful rather than neutral constructs which are equally applicable to all -

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<sup>126</sup> Brewster Kneen, *The Tyranny of Rights* (Ottawa: The Ram's Horn, 2009). p16

<sup>127</sup> Falk in Kneen, *Ibid* p18-19

<sup>128</sup> Gilles Deleuze, *Foucault*, trans. S Hand (London: Continuum, 2010). p26

becomes a particularly potent challenge to these norms. This is not just because of the power dynamics at the time of a resolution's passing but because such movements will also potentially recall the unjust historical structures of power and dominance related to both rights and sexuality (particularly in terms of colonial law). Thus resolutions about sexual orientation are rarely simply about sexual orientation alone, but a whole host of further dynamics, historical and present power relations, anxieties about change and control within and without the boundaries of household, state, family and self. Again, this is not a critique of the use of human rights to further the liberation of sexual minorities, it is instead an attempt to contextualise some of the frameworks within which controversies around these attempts might play out and to understand why issues of sexuality can become so emotive. By addressing questions of human rights and sexual orientation as Deleuzian 'problems', I am therefore attempting to widen the frame through which we can understand the multiple and myriad connections that are made through references to sexuality. As such I am seeking not only to embed questions of sexual rights within their wider material and contextual frame, but also to seek to bypass some of the debates that currently lead only to impasse within already established discursive formations.

A second critique of a human rights approach draws on the work of Sara Ahmed. Ahmed also touches on issues of belonging, legitimisation and responsibility by addressing the discourses by which inclusion and exclusion are exercised and through this process, the way in which the figure of the stranger is constructed. She argues that the stranger is the 'known other', someone who we know as 'not belonging'. Thus, the stranger, or the other is not some unknown quantity, but a figure created by the very process of construction of boundaries. The effect, she argues is divisive:

'The effects of stranger fetishism are clear: the figure of the stranger assumes a life of its own only insofar as it is cut off from the histories of its determination, and hence only insofar as it erases the very forms of difference that render impossible the formation of an inclusive community'<sup>129</sup>

In essence, we work to make something unknown, known as 'not like me'. Again, this becomes an effect of categorisation and naming: the 'other' is categorised in a particular way and can then be excluded or ignored. No attempt is made to interrogate differences, or explore avenues in which we may come to know the other, the potential for hybridity or 'curdled otherness'.<sup>130</sup> Difference is essential and eternal. The borders of inside and outside are sharply and

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<sup>129</sup> Sara Ahmed, *Strange Encounters: Embodied Others in Postcoloniality* (London: Routledge, 2000). p6

<sup>130</sup> Suparna Bhaskaran, *Made in India: Decolonizations, Queer Sexualities, Trans/National Projects* (New York: Palgrave Macmillan, 2004). p56

permanently drawn, placing self and other on particular sides. Thus, there can be no gay people in Africa and homosexuality is a white man's disease. Concurrently therefore, all Africans must be homophobic – placed permanently on the side of an unquestioned Western/non-Western binary which equates tolerance and therefore civilisation with the West, and uncivilised barbarity elsewhere. Both 'sides' I would suggest, are equally guilty of thinking binary identities.

This does not mean we should ignore difference or embrace some single teleological end. On the contrary, all differences, limits, boundaries and encounters should be thoroughly interrogated - difference does not have to remain always and eternal in exactly the same form in which we first encounter it. Difference returns, but without identity. The danger is that by ascribing rights on the basis of reified ideas of difference we are simply ignoring difference on a deeper level: difference is ascribed a particular place within our ontological framework and can then potentially be ignored, or at least, always responded to in the same legally prescribed manner. This is an abdication of responsibility on the part of both individual and state.

One final point to which we have already alluded should be made explicit here: that liberal discourse hides the very fact and the violence of its own production of truth – law hides the fact that what it presents as normal is only one conception of so-called 'normality' 'the rational is always the rationality of an irrational'.<sup>131</sup> Thus, the law positions the field for debate in a particular way and then hides the very fact that it has done this. Rajagopal has traced the way in which international law achieves this end, arguing that just as the mandate system converted humanitarianism from a system of dominance to a system of governance,<sup>132</sup> human rights too, facilitate the functioning of governmentality. He argues that human rights have particular historical roots, particular institutional and standardised features, particular conceptions of what it is to be human and particular notions of truth which impact upon the way in which they are able to react to particular occurrences and injustices.<sup>133</sup> Through a process of rationalisation, disputes can be brought into an already constructed framework that makes them knowable and governable without ever challenging overarching structures and institutions of power. In this vein, Morgan argues that:

'Indeed the whole genus of human rights law can be read as examples in the exercise of disciplinary power. Human rights law *normalizes*. It takes the abuses suffered by those who assert difference, and colonizes their experiences to make them conformable to the structures

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<sup>131</sup> 'Capitalism: A Very Special Delirium' Interview with Gilles Deleuze and Félix Guattari. In *Chaosophy*, ed. Sylvère Lotringer, (Autonomedia/Semiotexte, 1995) at [www.generation-online.org/p/fpdeleuze7.htm](http://www.generation-online.org/p/fpdeleuze7.htm) accessed 8/12/2011

<sup>132</sup> Balakrishnan Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance* (Cambridge: Cambridge University Press, 2003).

<sup>133</sup> Ibid.

and imperatives of the mythological nation state. And along the way, it usually exonerates governments of any wrong-doing'<sup>134</sup>

This discursive repositioning is not unique to human rights law, in relation to discourses of 'development' for example, D'Souza has noted the way in which particular Conventions and Commissions represent mechanisms by which a shift towards particular neoliberal regimes could be facilitated and legitimated. In essence, in examining developments in relation to human rights or, as in D'Souza's analysis, development and access to water, we must be attentive not just to the decisions made or the rights achieved but to the way in which such processes can reinforce particular regimes.<sup>135</sup> The question, with Deleuze and Foucault might be, 'how is power practiced?'<sup>136</sup> What is the force and flow of relations, what is their impact and specific to the topic at hand, what role do rights play in this process?

### **Sexual orientation and 'double sided' rights: Rights as control and rights as challenge**

I would suggest that these issues are symptomatic of the way in which sexuality straddles two slightly different (but closely related) problems. The first concerns the immediate and real injustices faced by sexual minorities – extrajudicial executions, violence, discrimination, violations of privacy, interference in family life, restrictions on expression and assembly, persecution by state authorities and many more. These issues tend to be definable in terms of already existing human rights norms and can use human rights documents as a framework for action. In this conceptualisation, the tools that were (and still are) objects of regulation and discipline can be turned back upon themselves - in producing the homosexual, law also has the potential to empower him or her. 'It engenders behaviour, it generates ideas and action, it bounds individual responsibility as well as promoting individual capacity and agency and, in so doing, it constitutes individualized notions of identity.'<sup>137</sup>

This framework of rights is the main focus of this chapter – the majority of the reforms, legislation and criticisms address this aspect of rights discourse – an aspect that is most connected with law, administration and control. Broadly speaking, we might view this aspect of

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<sup>134</sup> Wayne Morgan, "Queering International Human Rights Law," in *Sexuality in the Legal Arena*, ed. Carl Stychin and Didi Herman (London: Athlone, 2000).

<sup>135</sup> Radha D'Souza, "'Law' and 'Development' Discourses About Water: Understanding Agency in Regime Changes," in *Water Law at the Crossroads in India: National and International Perspectives*, ed. U. Ramanathan P. Cullet, et al (New Delhi: Cambridge University Press, 2009). 2009 p31

<sup>136</sup> Deleuze, *Foucault*. p60

<sup>137</sup> Oliver Phillips, "Constituting the Global Gay: Issues of Individual Subjectivity and Sexuality in Southern Africa," in *Sexuality in the Legal Arena*, ed. D Herman and C. F Stychin (Athlone, 2000).

rights as machines of territorialisation, and beyond this 'a way of reterritorialising oneself, conforming to a code of domination utterances, to a territory of established states of things'<sup>138</sup>

Yet I want to suggest that within these codified, constitutionalised, contested rights, there is a second aspect, which haunts the rights discourse. This aspect relates to the virtual, rather than particular actualised right or law. As such, Colebrook notes that:

'Deleuze focuses on the virtual not as some structural condition that we only know after the event, but the virtual as the real potentiality from which actuality unfolds. In addition to societies, revolutions or laws as they are known in history, there is also the idea of society, the idea of revolution and the idea of law. This world as it is known and lived emerged from a range of potentialities that have a *real* range and conditions.'<sup>139</sup>

Thus those laws that we actualise are only one potential from the virtuality, of rights; this virtuality, or these virtual objects are no less real, or present than the laws that we see debated in courts or UN bodies. In this understanding, law, rights societal structures only emerge because of their relationship with the virtual that is expressed or repeated the actual. Thus we must interrogate the conditions of emergence of the actual or material structures. As such, this second dynamic concerns larger and systemic issues of why perceived injustices are read and posited in the way that they are. Or, how do rights and sexuality intersect in such a way as to make the claims to privacy, non-discrimination or even equality in relation to sexual orientation a legitimate mode of expressing a wrong? What combination of factors is available to us to understand and define victims, oppressor, Western, non-Western, culture, belonging, human, moral or immoral and why are these terms important? Equally important is the question of what approaching these problematics in this way makes less pertinent or relevant. Here then, I would suggest that rights begin to act as a machine of deterritorialisation – a mode of experimentation, expression or becoming-something-other. In this way, rights speak to a process not of inclusion within an already striated space, but what Colebrook calls 'the reconfiguration of the lawful, allowing new modes of what may lay claim to the concept.'<sup>140</sup> This is perhaps why Deleuze suggests that 'there are no human rights, there is life, and there are life rights. . . . That's what being on the left is about. It's creating the right'<sup>141</sup>

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<sup>138</sup> Deleuze & Parnet 1987 p74 cited in in Patrick Hanafin, "Rights of Passage: Law and the Biopolitics of Dying," in *Deleuze and Law: Forensic Futures*, ed. Rosi Braidotti, Claire Colebrook, and Patrick Hanafin (Basingstoke: Palgrave Macmillan, 2009).

<sup>139</sup> Claire Colebrook, "Legal Theory after Deleuze," in *Deleuze and Law: Forensic Futures*, ed. Rosi Braidotti, Claire Colebrook, and Patrick Hanafin (Basingstoke: Palgrave Macmillan, 2009). p13

<sup>140</sup> Ibid p14

<sup>141</sup> Gilles Deleuze *On Human Rights* L'Abécédaire de Gilles Deleuze, avec Claire Parnet, Vidéo Éd. Montparnasse, 1996 at [www.generation-online.org/p/fpdeleuze10.htm](http://www.generation-online.org/p/fpdeleuze10.htm) accessed 12/12/2011

This second, wider framework is both seemingly imperceptible and open ended. We can sketch out a framework of the particular forces that constitute a system of human rights in international law, the particular powers and histories that motivate it and the particular blind spots of the system, but we must recognise that this system is one that is both static and breaking down at the same time, in response to new events, encounters and lines of flight. The reason that I find this to be particularly important is that such an understanding highlights the significance and interconnection of structure, contingency, chance or unpredictability and agency at the same time. The wider frame of law within which we must act is a territorial(-ising) assemblage – a multiplicity that is neither entirely structured and structuring, nor amenable to the manipulation of particular agents. An awareness of this frame as both restrictive but open points towards the opportunities still offered by the human rights discourse. We work on and in a particular system of law, with a particular structure of language, binaries, strategies and this can mean that particular demands or political divisions *must* play out in a particular way.

It is at this point I would argue that human rights are at their most precarious and their most interesting. Rights exist most demandingly not as a clear path to liberation but as a challenge – as markers that allow us to orient ourselves towards the problematic point at which frameworks of law and rights are at their most precarious: to the limits of what rights can do. Paradoxically then, our key concern must be the elusive point at which attempts are made to dismiss issues as not relevant to human rights; this will not be because such dismissals are either ‘right’ or ‘wrong’ but because such moments suggest a gap or a blind spot – a failure of the language of law to encapsulate a problematic and therefore the limits of what is currently possible. This is why sexuality and human rights are often so interesting. Sexuality must, in part, be a deferred totality; I have suggested that sexuality is an ‘empty square’ that resonates between series. As such, it continually shifts, desires and connects. This is the aspect that makes it so problematic in relation to the first codified and codifiable aspect of rights, but so interesting in relation to the second, more open ended articulation of rights – that aspect of rights which acknowledges the presence of the virtual and acts as a machine of deterritorialisation.

Thus rather than simply engaging with human rights norms in order to achieve particular ends – particular concessions from the state in relation to sexuality - a process is needed by which the body, the lived experience and the space occupied by those who do not easily fit within already legislated parameters become a potential site of challenge, or a means of exposing the internal limits of the law. Sexuality operates and is regulated at many different levels. An exploration of this regulation indicates the interconnectedness of the discourses that structure our societies

and the way in which law relates to such discourses, what it can sustain and what it struggles with. More significantly for our purposes however, it also shows the limits, the rationalisations, and the gaps through which the law fails to properly know the experience of sexuality. As such, the sexual subject becomes a site upon which a reverse discourse can be formulated. This is not an easy or obvious task – operating in this way requires not a complete abandonment of the structures through which human rights operate but an approach that seeks to engage with the logics created by law and in doing so, expose their limits. The question therefore is one of how far to work within a particular legal discourse of truth and identity, and how far to work at an angle to it – aware of its powers, constraints and limits, but challenging its truths and historiographies.

Clearly therefore, what is required is an awareness that rights and law in themselves are limited in their ability to produce and sustain any kind of recognisable ‘truth’ of sexuality or of the day-to-day experience of the myriad different ways of living a situated non-heteronormative life. Donna Haraway makes an important point in this regard when she talks of situated knowledges, arguing that, '[f]eminist objectivity is about limited location and situated knowledge, not about transcendence and splitting of subject and object. In this way we might become answerable for what we learn how to see.'<sup>142</sup> Knowledge comes from perspective, from lived experience, not abstract morality or general truth. This means that justice must always be situated, responsive and responsible.

What is necessary here then is a clear understanding of the limited and situated nature of law in relation to sexuality and the way in which law must play a (re-)territorialising role in its interaction with sexual minorities. Because of the particular historiography of law and colonialism in relation to sexuality, this reterritorialising moment is extremely problematic in international arenas. Rights are one factor among many which constitute and are constituted by issues of sexuality. Thus while we can focus on sexuality as it is represented in human rights terms, this must be done against a background of the wider issue of what human rights make possible or impossible. We cannot lift ‘alternative’ sexualities from their situatedness that contributes to their definition as ‘alternative’ nor can we necessarily change the fact that law works in a constant push-pull of emancipation/regulation. We can however, try to grasp how law functions and contributes to the construction of identity through this emancipatory/regulatory process.

Thus, the quote used by Henderson in the title of her article discussing the impact of the Toonen decision for Tasmanian gay people – the assertion that, ‘I’d rather be an outlaw’ is very

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<sup>142</sup> Donna J. Haraway, *Simians, Cyborgs and Women: The Reinvention of Nature* (London: Routledge, 1991).

interesting. The outlaw needed is of a very specific kind – not one who cuts herself off from the operations of legal discourses, but one who, deliberately or otherwise, positions herself on the limits and margins of the law, occupying these borders in an attempt to create a space that draws attention to their existence. Thus, the sexual other can sometimes, although not always, embody the contradictions inherent in the legal regulation of sexuality, and this embodiment is potentially a point of challenge. We cannot ignore and work completely outside the limits of the law, but we can step back from the truth of those limits, challenge frameworks and demand more. We cannot escape the discursive and regulatory power of liberal human rights law, but we can challenge its application. Put simply: when one aspect of law seeks to institutionalise sexuality and in doing so regulate and control it, the challenge to activists is to refuse to let it do so. In this imagining, claims to human rights, particularly when followed by an accusation that such issues are not human rights issues at all may mark a shift, a crack in the territorialised assemblage or the beginning of a line of flight into new and unknown territory.

Such lines of flight are rarely safe – Deleuze draws attention to the possibility of re-territorialisation or the perpetuation of micro-fascisms along the line.<sup>143</sup> Ironically, in many instances, human rights may not always be the way forward – they appear to come into play, or be most needed when they are at the end of their capacity to do anything at all. It might be most accurate to argue that in relation to sexuality, human rights do not always offer us the answer, instead they point to the need to ask more questions.

Framing rights struggles in this way demands that rights-related struggles should not be about top down moral judgements or the institutionalised and institution-dependent logic of human rights but about legally informed sites of struggle – recognition that the law will always be regulative, but through its very act of regulation, it opens the door to the possibility of re-regulation and challenge. Human rights as legal instruments should therefore not be viewed as ends in themselves, but as tools that are available for fighting or for clarifying battles over nomenclature, over existence, over morality and even over the very framework through which the rights discourse operates. This is perhaps why it is important to start with, but not be limited by the way in which human rights and sexuality are currently positioned in relation to each other in international governmental organisations and courts. The debates in the UN and the way in which the Toonen Judgment was framed is interesting – such instances give an indication of the status of rights and sexuality at a particular time, as well as of the changing position that sexuality is beginning to occupy within both hard and soft law. A focus on international human rights institutions allows an analysis of the disciplinary forces at work in

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<sup>143</sup> Gilles Deleuze and Claire Parnet, *Dialogues 2*, trans. Hugh Tomlinson and Barbara Habberjam (London Continuum, 2006).p104



relation to sexual orientation, sexual subjectivity and sexuality more generally. As tools for addressing embodied wrongs however, rights in relation to sexuality often find their limits. The paradox of rights as simultaneously a mode of emancipation and a mode of control is the focus of the following chapters.

This approach severely reduces the potential of human rights in relation to sexuality but does not (yet) completely destroy their worth. Rights here seem to be an entry point – a way of attempting to comprehend how the system of sexuality/visibility/law functions – a discursive terrain on which limits can be, if not fully explored, then at least tentatively and partially engaged with, creating new possibilities for action, engagement and empowerment that may or may not make use of existing human rights language. It is unlikely that structures of power and law can be taken on in their own terms, the strategy must be to try to change the rules of the game.<sup>144</sup> This cannot be done without situating ‘what has happened’ within a wider context. When approaching such occurrences in relation to human rights, I would argue that it is therefore necessary to explore both the actual (what has happened materially and how structures of law relate to this) but also the virtual potentialities that haunt each event and demand an examination of the conditions of emergence of material circumstances. To put this differently: exposing the limits within which games are played is one step in the process of changing the rules. Many (although not all) human rights campaigners generally and gay rights campaigners specifically are aware of the institutional limits that engaging with the discourse of human rights impose on them, however, at both the level of tactics – in achieving immediate change, and strategy – in challenging overarching epistemologies, human rights still have the potential to be a useful weapon. What must always be kept in mind, however, is how and why such discourses are being engaged: rights do not offer us truth, they offer us tactics. There is a danger of imposing an artificial clarity here, or of viewing binaries, borders and difference as static, when in fact they are anything but. Truth here requires an oscillation between general and particular – between situated knowledge and an exploration of wider structures within which such situated lives are lived.

Thus, while the law may construct sexuality as an identifiable aspect of selfhood that can be defined and regulated, we must reclaim sexuality as a political challenge. In this perspective, neither rights nor activist discourse related to sexuality offer us a blueprint for what a gay/lesbian/trans person *is* and instead offer ‘holding space’ from where new narratives of sexuality can be drawn, new truths can be interrogated and new challenges can be made.<sup>145</sup> To this end, Morgan argues – somewhere in between the arguments of Saiz and Henderson, that

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<sup>144</sup> Raewyn Connell, *Southern Theory* (Polity, 2007). p186

<sup>145</sup> Mikki van Zyl, "Shaping Sexualities - Per(Transforming) Queer," in *Performing Queer - Shaping Sexualities 1994 - 2004 - Volume One*, ed. Mikki van Zyl and Melissa Steyn, *Social Identities in South Africa* (Kwela Books, 2005). 19

one of the key effects of the Tasmanian communication has been to give gay Tasmanian men and women the opportunity to tell their own stories about their sexuality and by doing so, dispute the law's 'truth' about the 'homosexual'.<sup>146</sup> The judgment becomes one step in a process of deterritorialisation that has resonated in positive ways for some and less positively for others.

At issue here is the dual sidedness that characterises law more generally, but rights in this particular instance. Rights undeniably have a disciplinary, governmental aspect. They are embedded in a particular historical discourse of subjectivity and control and function in a primarily 'top-down' fashion that assigns names and positions that can bear little resemblance to the reality of lived experience, and moreover can work to alienate individuals from their lived surroundings and each other. We have seen how the operation of rights in relation to sexuality can work in bodies such as the UN to reaffirm particular structural binaries and divisions of insider/outsider, Western/non-Western. These divisions become self-perpetuating and can further alienate subject from state, state from state, and person from 'subjectivity'. It should be noted that the rights discourse does not achieve this alone, but the law can play a very powerful role in affirming particular modes of visibility and articulation.

Yet I have also suggested that there is a second side to rights – one that in conjunction with sexuality, draws attention to the unactualised possibilities of particular laws and to the open ended nature of what is possible or impossible in any particular context. I would argue that an attempt to situate rights and sexuality within a wider context both demands and brings into focus this second aspect of rights. This does not mean that rights can be entirely 'rescued': the virtual and actual work together and rights operate both in terms of *potestas* and *potentia*.<sup>147</sup> Furthermore, any attempt to exploit this more open-ended aspect of rights is not risk free – and the cost of deterritorialisation or the line of flight will be high. I would argue however, that despite these risks, it is this second, more open-ended aspect of rights that offers the most interesting potential for action and activism. In the following chapters, I will attempt to explore both the context and dynamics of attempting to engage more closely with this second, demanding and open-ended aspect of rights and the consequences that may follow from doing so.

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<sup>146</sup> Wayne Morgan, "Law and Change, Identifying Evil for What It Is: Tasmania, Sexual Perversity and the United Nations," *Melbourne University Law Review* 3 (1994). 740-1

<sup>147</sup> Braidotti, *Metamorphoses: Towards a Materialist Theory of Becoming*. p21-22

## **Chapter Four – Narratives of identity and inclusion: International LGBT advocacy and Iran**

### **Dynamics of naming and recognition: Activist responses to the execution of minors for sexual crimes in Iran**

The previous chapter considered the circulation of sexuality through various instruments of international human rights law in order to identify current problematics of sexuality and rights. A particular theme that emerges in relation to such considerations is the dualistic nature of the operation of rights: rights become a kind of abstract machine, at once breaking down and building up structures of law and normativity. This double movement, I would suggest, forms both the paradox and the potential of rights and sexuality. However, an examination of human rights instruments alone will only capture a partial picture of how such paradoxes and potentialities are played out; of equal importance is the way in which civil society groups, activists and more general discursive interactions also form a medium through which questions of sexuality and rights circulate.

This chapter begins to examine the way in which this might occur. However, it would be very difficult to explore all interactions of all activist organisations or social movements in relation to sexuality and human rights in all locations or at all times. The scope of analysis is therefore necessarily limited – my aim is to attempt to draw themes from a limited set of events in order to conceptualise how issues surrounding rights and sexuality might interact. Thus sexuality here is understood as moving through multiple series, facilitating resonance, but not synthesis. The two questions under consideration concern what such resonances might or might not be, and how such an understanding of sexuality can be translated into political action.

Of key importance here are issues of power, recognition, visibility and voice and the way in which these issues interact with processes of subjectivation in which the subject is not fixed and stable but is instead an assemblage of heterogeneous elements. My aim is to try to analyse the way in which we tell ourselves particular stories about sexuality, or use particular narratives to render comprehensible political or legal actions around sexuality, anchored to a sexual subject. Of interest therefore is the way in which we territorialise sexual becoming. This means that my focus is not so much the particularities of each individual story, but the dynamics through which such narratives are circulated. As such, I do not intend to apportion blame to one particular actor over another, or to valorise one particular mode of action, I am more interested in the way in which stories repeat and are repeated. Deleuze and Guattari recall this repetition or reiteration in their image of a child singing to himself in the dark, repeating a song in order to orient himself in relation to the chaos around him. The refrain temporarily creates order, or

particular stratifications, that grow stronger as they are repeated. We create 'home' by drawing a centre around a fragile circle.<sup>1</sup> In this way, we might explore the way in which particular stratified 'truths' of sexuality (or more accurately particular sexual identities or nomenclatures of sexual orientation) are constituted by their repetition in the face of chaos and conflicting information. In previous chapters, I have highlighted the way in which particular binary oppositions are becoming increasingly entrenched with regards work within the UN in relation to sexuality; what is significant here however, is the way in which such binaries, or at least selections of coherent narratives and groupings, are necessary for political action. Of primary importance then, are epistemological conditions or the question of *how* we know what we know: which repetitions are taken as axiomatic, why they might be taken to be as such, and what impact this has on the possibility for action. In essence, there is a question here of what possibilities are being closed down by the ascription of a single form of knowledge or subjectivity to the singularities with which we are dealing and what power dynamics are working to contribute to this process. I would suggest that international legal institutions both contribute to, and are influenced by this process. Thus, this chapter is in large part an analysis of the dynamics of the refrain, and as such the key question is not which individual is saying what, but what does the act of articulation or visibilisation bring into proximity and how is this proximity viewed and understood?

Obviously, it is not possible to explore all of the stories we tell ourselves about sexuality, or homosexuality. Different narratives circulate in different spaces and some themes resonate much more clearly at different times. Of particular interest to me however, is the spatial division of sexual subjectivities, or the association of same sex activity (and the identities attached to same sex activity) to particular regions, and the association of these regions with discourses of civilisation or barbarity. This regionalisation can be physical – for example, homosexuality becomes something 'Western' - or it can be enacted as belonging or not belonging to a particular grouping, culture or mode of living (whiteness, wealth, atheism etc.). This spatialisation brings into proximity certain subjectivities and tendencies in a mutually reinforcing dynamic. A process of 'othering' along the line of sexuality, brings particular 'identities', which are accompanied by particular resonances, into clearer focus. These resonances can then be circulated through both official and unofficial channels. Thus 'homosexuality is a white man's disease', 'there are no homosexuals in Iran', 'Fundamentalist Islam poses a threat to all gay people'. Clearly all of these statements can be disputed or accused of lacking in nuance or accuracy, but at this level of political discourse, the narrative wholeness of such statements become compelling. We might accept that politics or law must

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<sup>1</sup> Gilles Deleuze and Félix Guattari, *A Thousand Plateaus*, trans. B Massumi (London: Continuum, 2004). p342

proceed through the use of proper names, figures or ideas, and even through modes of political storytelling, yet I am interested in the way in which there are several levels of complexity at work within this operation. If we accept that each name or event is the actualisation of a much larger virtuality that haunts the materiality of what is actualised, we become aware of the limits of the linguistic tools to which we have access and the limitations that these tools place on us, however necessary they may be. The consequences of these limitations are the key concern of this chapter.

I have discussed the limits of 'naming' in relation to sexuality in the previous chapter. This argument can be extended through the suggestion that these linguistic inaccuracies indicate that there is a limitation of the concept at work here. For Deleuze and Guattari, the concept is not a denotation of a state of affairs or a signification of the lived. Concepts are instead 'fuzzy' multiplicities moving on the plane of immanence;<sup>2</sup> they are points of multiplicity that are occasioned by problems and apprehend the event. The concept is not a label to be attached to things, but a particular orientation that remains open and expansive: concepts force us to think.<sup>3</sup> For Grosz, '[c]oncepts are points of multiplicity, connections of components, which share "zones of proximity," borders, with other concepts, marked by irregular contours, an improper or imperfect fit.'<sup>4</sup> The danger that Deleuze and Guattari warn us of is the confusion of concept with function, and most particularly in this case the reduction of the concept to opinion or doxa.<sup>5</sup> Thus:

'*Doxa* is a type of proposition that arises in the following way: in a given perceptive-affective lived situation...someone extracts a pure quality from it...but at the same time as he abstracts the quality, he identifies himself with a generic subject experiencing a common affection. "Discussion," therefore, bears on the choice of the abstract perceptual quality and on the power of the generic subject affected...opinion is an abstract thought...opinion expresses the general functions of particular states. It extracts an abstract quality from perception and a general power from affection: in this sense all opinion is already political. That is why so many discussions can be expressed in this way: "as a man, I consider all women to be unfaithful"; "as a woman, I think men are liars."<sup>6</sup>

To return to the three statements above: the complex enunciations of homosexuality, or Africa or Islam, which we might posit as actualisations of a multiplicitious virtuality, are reduced to

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<sup>2</sup> Gilles Deleuze and Félix Guattari, *What Is Philosophy?*, trans. Graham Burchell and Hugh Tomlinson (London: Verso, 2009).p143-4

<sup>3</sup> Claire Colebrook, *Deleuze* (Oxon: Routledge, 2002). p15-17

<sup>4</sup> Elizabeth Grosz, *Time Travels: Feminsim, Nature, Power* (Duke University Press, 2005). p159

<sup>5</sup> Deleuze and Guattari, *What Is Philosophy?* p145, p150.

<sup>6</sup> Ibid. p145

perceptions and to doxa. Perception becomes abstracted and used to express generality. The fuzziness or open-ended nature of their existence is reduced as virtuality, or that which cannot be contained or thought within a particular milieu, is lost.

This means that we must be sensitive to the emplacement and proximity of particular perceptions, enunciations and functions and the way in which they circulate through official and unofficial channels of governance and communication. While part of this exercise involves the tracing of particular narratives to particular origins, I am also interested in the virtual aspects of such narratives: the different logics that are excluded as a result of the actualisation and reiteration of particular forms and moreover, the dynamic that makes this form of reiteration a particularly powerful mode of political action.<sup>7</sup>

While there are numerous narratives that could be addressed through this lens, the increased proximity of 'homophobia' and 'Islam' has proved particularly controversial in much recent discourse and academic work. The proximity of these terms can be viewed in both official channels (for example in immigration policies or equality legislation that takes as axiomatic that Islam and homosexuality are mutually incompatible) and in more unofficial discourse and media that reproduce and re-entrench particular perceptions. Puar notes the reductionist nature of such assumptions – in particular the way in which such circulations rely on notions of repressed Muslim sexuality and normative masculinity.<sup>8</sup> Specific, familiar perceptions of Islam are foregrounded and repeated in such a way as to replicate and authenticate themselves in a self-sustaining cycle. Thus, in operation, is the power dynamic identified by both Ahmed and Brown in which the stranger is the 'known other' – that which is already recognised as not belonging.<sup>9</sup> Recognition and classification operate pre-emptively, to position particular figures and others in relation to the self. Ahmed's analysis here has a highly spatial dimension: strangers are integrated into a 'cognitive map' that exists for the recognition and mediation of difference and its emplacement in a relational dynamic. Similarly, Brown notes the way in which power operates to dictate the limits of the tolerable in relation to otherness. Tolerance acts as a tool for managing otherness, but as with Ahmed, it is the centre which dictates the limits of the tolerable or the degree of otherness that can be permitted. As such, anything that falls outside such limits becomes both intolerant and from the viewpoint of the centre, intolerable. These analyses of inside/outside dynamics seem particularly important here as the

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<sup>7</sup> See eg Claire Colebrook, *Deleuze and the Meaning of Life* (London: Continuum, 2010). p7 on the distinction between active and passive vitalism.

<sup>8</sup> Jasbir K. Puar, *Terrorist Assemblages: Homonationalism in Queer Times* (Durham: Duke University Press, 2007). p91-2

<sup>9</sup> Sara Ahmed, *Strange Encounters: Embodied Others in Postcoloniality* (London: Routledge, 2000). p24-37

problematic proximity of Islam and homophobia seems to be bound up in similar dynamics of tolerance/intolerance, belonging/external and civilised/uncivilised.

The problem therefore, is not necessarily the simple question of whether such statements are 'true' or 'untrue' but the way in which particular meanings are 'fixed'. Moreover, the repetitive iteration and stabilisation of such positions creates a lack of space for addressing alternative proximities, alternative planes of meaning or alternative modes of being. Put more simply, the problem is the perpetuation of a dualistic narrative that fails to unpick the operation of power on either side of a binary division. In relation to gay rights, the effect can be a tendency to 'teleologise' gay liberation and gay rights, particularly in an eventual movement towards equality legislation as the *only* direction in which we should move (and indeed are capable of progressing).<sup>10</sup> This is not to say that gay rights are in themselves bad things, and it is certainly not an exhortation to simply ignore suffering that is endured on the basis of sexuality, however, it is a caution against the idea that there can be only one mode of sexual liberation or expression (or indeed one mode of opposition).

Outside the realm of doxa, the complexity of the multiple different modes of perception, expression and states of affairs quickly undermine simple binary expressions or teleological wholeness. Often these complications express paradoxical relationships with self and state – Long cites the example of one US soldier, who, on hearing of the hanging of two young men in Iran, wrote to the blogger Andrew Sullivan, stating that:

'Your post on the Islamo-fascist hanging/murder of the two gay men confirmed for me that my recent decision to join the U.S. military was correct. I have to stuff myself back in the closet [because of the US ban on gays in the armed services] . . . but our war on terror trumps my personal comfort at this point.'<sup>11</sup>

The circumstances surrounding this quote should be directly addressed here, as they concern an event that demonstrates various dynamics with which I will engage and return to throughout this chapter. Long's article focuses on the execution of a young man, Makwan Mouloudzadeh, in Iran in 2007 for an alleged rape committed when Mouloudzadeh was thirteen. Long also references the 2005 execution of two young men - Mahmoud A. and Ayaz M – accused of sexually assaulting a thirteen-year-old boy. At least one of the accused young men was under eighteen at the time of the alleged assault. Photos of the 2005 execution were published on the website of 'Outrage!', a British gay rights campaigning group. These executions produced a

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<sup>10</sup> J Binnie, *The Globalization of Sexuality* (London: Sage, 2004).

<sup>11</sup> Cited in Scott Long, "Unbearable Witness: How Western Activists (Mis)Recognize Sexuality in Iran," *Contemporary Politics* 15, no. 1 (2009). p124

great deal of action and activism – in the form of calls to action, articles, direct requests to Iranian authorities, and in the case of Mouloudzadeh, the sending of roses, either real or virtual (by email), to Ahmadinejad.<sup>12</sup> In the course of this activism, the boys were very clearly coded as gay. What is notable however, is the fact that while there were pertinent questions to be asked about the validity of the young men's convictions (in Mouloudzadeh's case, for example, there appear to have been numerous irregularities with his conviction and his alleged victims recanted their accusations<sup>13</sup>), the charges laid were not for consensual homosexual sex but for sexual assault or rape - it is not clear that the boys actually identified as gay. Long's article is highly critical of certain groups and actors (referenced by name) in relation to this assumption of homosexual identities for the executed boys and this criticism itself caused a great deal of further animosity.<sup>14</sup> The fact that such controversy arose should not obscure the well-documented suffering of LGBT people in Iran<sup>15</sup>, however, it does bring to light some of the problematics that can occur when LGBT identities are too readily ascribed and when the suffering of particular individuals is too easily subsumed into already coded narratives.

To return to the quote from the US soldier above, while we cannot compare the Don't Ask Don't Tell (DADT) ban on openly gay US military personnel with the possibility of the death penalty for consensual homosexual sex, this statement seems to gloss over many of the complexities at hand – if the US is the bastion of tolerance and civilisation in relation to homosexuality, why would stuffing oneself back into the closet be necessary? In this instance, sexual otherness seems to occupy a space both within and without the national imaginary: it is tolerated but under limited conditions, yet it also becomes a marker of intolerance in others.

Similarly the positioning of Islam and homophobia in a particular relationship allows the positing of other trajectories, groupings and stratifications – further discursive repetitions that create particular stratifications. In the UK for example, the construction of proximity between gay rights and far-right or nationalist movements is emerging as a worrying possibility. While this does not mean that all gay rights groups will necessarily be xenophobic or racist, we can point to the way in which the English Defence League has established a LGBT defenders division, or the recent cancellation of an East End Pride March in London after it emerged that

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<sup>12</sup> Ibid. p121

<sup>13</sup> Human Rights Watch, "We Are a Buried Generation: Discrimination and Violence against Sexual Minorities in Iran," (New York: Human Rights Watch, 2010).p28-9

<sup>14</sup> See eg – 'Human Rights Watch apologies to Peter Tatchell'

[www.petertatchell.net/international/world\\_general/hrw-apology-to-peter-tatchell.htm](http://www.petertatchell.net/international/world_general/hrw-apology-to-peter-tatchell.htm) accessed 12/12/2011, 'Gay Media's Failure to Accurately Report Adds to Growing Hatred Towards Islamic World'

[www.ukgaynews.org.uk/Archive/2005aug/0102.htm](http://www.ukgaynews.org.uk/Archive/2005aug/0102.htm) accessed 12/12/2011, 'Did Peter Tatchell Use Libel Laws to Delegitimise Criticism?' [www.socialistunity.com/?p=6218](http://www.socialistunity.com/?p=6218), accessed 12/12/2011 Long, Scott *Debating Iran*, Gay City News, Vol 5 No30 July 27- Aug 2 2006

<sup>15</sup> Human Rights Watch, "We Are a Buried Generation: Discrimination and Violence against Sexual Minorities in Iran.", Safra Project, "Country Information Report: Iran," (London: Safra Project, 2004).



the organisers had links to far right and anti-Muslim groups, to highlight the way in which the fixing of Islam as a threat brings particular interests into proximity with each other.<sup>16</sup> Similar political proximities have arisen in some European political arenas: for example, in commenting on the Gay Dutch politician Pim Fortuyn, Furuhashi notes that 'The rise of Pim Fortuyn...signalled a new era of white gay male politics. By promoting anti-immigrant politics vigorously and marketing it with anti-Muslim prejudice demagogically, Fortuyn showed that right-wing populism can very well be gay and enormously popular to boot.'<sup>17</sup> These problematic proximities might be linked to what Puar has identified as 'homonationalism' – the complicity of particular gay groups with nationalist projects in order to sustain their own belonging and the sometimes violent and usually myopic imposition of one form of sexual politics on all individuals and communities. Such discourses line up with or feed into already existing fears surrounding the stranger and otherness and thus can pass unnoticed or accepted until they are, sometimes explosively, brought to light. Inclusion for some comes at the expense of others – those who are discursively repositioned by 'homonormative rhetorical machinations'<sup>18</sup> as being 'out of place', 'unacceptable', not belonging. Thus again, the dynamic of civilised/uncivilised, insider/outsider is not a simple duality, but a condition of particular proximities that activate at a particular time in particular spaces and through particular named identities. Much of current human rights discourse surrounding sexuality seems to circulate through these identities (gay, lesbian, victim, activist) – even when it is recognised that such terminology is highly problematic. A key question perhaps concerns what happens when such identities are troubled or disturbed or how identities can be usefully, troubled, disturbed and critiqued in order to support sustainable counter-narratives of belonging.

Having outlined the particular dynamics in operation here, I should perhaps also address a particular methodological concern. In analysing these issues, I do not intend to apportion blame to particular individuals for perpetuating particular narratives of sexual belonging or otherwise, nor am I primarily interested in creating new narratives of oppression or victim – I do not intend to attempt to 'set the story straight'. This issue is further complicated by my own proximity to LGBT politics and academic: my own particular 'location' means that I cannot claim an objective neutrality in relation to these controversies. Given my particular outlook and theoretical frame of reference, I am interested in the investigation of 'deterritorialisations' that have taken the form of critique or action against established stratifications of power or identity,

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<sup>16</sup> See eg – 'East End Pride cancelled over EDL claims' <http://www.bbc.co.uk/news/uk-england-london-12569166> accessed 13/9/2012

<sup>17</sup> Furuhashi 2004, cited in Jasbir K. Puar, "Homonationalism and Biopolitics," in *Out of Place: Interrogating Silences in Queerness/Racality*, ed. Adi Kuntsman and Esperanza Miyake (London: Raw Nerve Books, 2008).p37

<sup>18</sup> Martin F. Manalansan IV, "Race, Violence, and Neoliberal Spatial Politics in the Global City," *Social Text* 84-85 23, no. 3-4 (2005). p144

both within and without LGBT political institutions. My aim in this thesis is an interrogation of identity politics based around rights claims and this focus already places me somewhat closer to Long's position than that of groups such as Outrage!. Yet it would also be dishonest of me not to acknowledge my own identity and positionality in relation to these issues. I have already addressed the privilege of my educational background (a privilege furthered by the fact that I am white and relatively middle class). However, I am also a queer woman and as such, this colours both my understanding of, and access to questions of sexual orientation. This is significant because much of the theoretical work of my thesis begins from a critique of human rights norms and the imperatives placed on those who do LGBT activism by their adherence to a human rights framework. While I believe that this critique is necessary and important – and one that someone of my academic background (particularly in terms of access to theoretical texts and the luxury of a relative removal from the immediacy of activist work) is well placed to undertake – it does leave me open to the suggestion that I am ignoring political imperatives or obscuring subaltern agency and voices by taking as my starting point the power differentials of human rights work. Ironically however, my 'identity' as a lesbian can go some way to mediating this critique – or at least can afford me more space than might be granted to a white heterosexual man. Counter-intuitively, the very overarching identities that form the bedrock of my critique also enable me to occupy a space from which I can make this critique.

This means that in response to the suggestion that I am endorsing Long's critiques while hiding behind my own 'identity', I can perhaps only suggest that in this case, and despite the antagonisms that are evident here, rigidly adhering to dualisms is perhaps not the best way to address these issues, and that identity and positionality is more complex than a closed binary might allow (for example, Long occupies a position of privilege relative to gender that I will never know). It is necessary for me to acknowledge my own emplacement and bias in addressing these issues, but at the same time, I want to draw back from further contributing to the creation of antagonistic dualisms: I do not want to set up particular actors or personalities as a 'new' opposition. Instead this chapter makes an attempt to open up or deterritorialise and reterritorialise current issues in an attempt to make visible some of the less recognised power dynamics and linguistic connections at play – as such I am interested in identifying the simultaneous expression of molar and molecular tendencies within a particular context or identity cluster rather than viewing the two in terms of a simple binary opposition. However, this is not done with an entirely detached, objective neutrality. Instead, I am trying to emplace myself within a particular disjuncture and follow particular reverberations as far as possible.

## **Narratives of inside/outside, inclusion/exclusion as a mode of activist organisation**

The issue of emplacement within a particular combination of forces is significant here. Feminist engagements with Deleuze and Guattari have noted the importance of situating oneself carefully in relation to the multiplicity with which one engages.<sup>19</sup> We might read Spivak's criticism of Deleuze and Foucault for failing to recognise their own privilege as subjects able to speak, write and represent<sup>20</sup>, as a warning here: we must pay careful attention to our own situatedness in relation to the issues under consideration. The recognition of the way in which privilege operates is significant here, both in relation to Braidotti's suggestion that how we appreciate Deleuzian notions of deterritorialisation and 'becoming' will in large part be impacted upon by one's own distance from or proximity to from an already stabilised identity or subject position<sup>21</sup> and also in terms of the power relations that make some modes of living more easily representable or replicable as subject positions than others. This is of importance, as in large part, many of the issues currently arising in relation to LGBT rights politics devolve in some way upon the question of representation. I would suggest that this is because LGBT rights form and contribute to a language that stabilises the possibility of the existence of a sexual subject or subjectivity, as well as the identities around which this sexual subject can cohere, the narratives within which they can be articulated and understood, and more generally, the space which they are able to inhabit. Thus at issue is the question of what can or cannot exist, how resistance can be made visible and more generally, what constitutes the inside and the outside in relation to this frame of the possible. Thus LGBT rights play a significant role in the dualities of known/unknown, stranger/neighbour, belonging/non-belonging.

For Deleuze and Guattari, the notion of inside/outside is less a question of division, so much as an issue of proximity:

'The distinction to be made is not at all between exterior and interior, which are always relative, changing and reversible, but between different types of multiplicities that coexist, interpenetrate and change place'<sup>22</sup>

Insider or outsider is not a permanent construction but the product of particular interactions in particular times and places. Inside/outside is a particular folding or the creation of a particular

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<sup>19</sup> Rosi Braidotti, *Metamorphoses: Towards a Materialist Theory of Becoming* (Cambridge: Polity Press, 2008). p84

<sup>20</sup> Gayatri Chakravorty Spivak, "'Can the Subaltern Speak?'" Revised Edition, from The "History" Chapter of Critique of Postcolonial Reason," in *Can the Subaltern Speak? Reflections on the History of an Idea*, ed. Rosalind C. Morris (Chichester: Columbia University Press, 2010).

<sup>21</sup> Rosi Braidotti, "Becoming Woman: Or Sexual Difference Revisited," *Theory, Culture and Society* 20, no. 3 (2003).  
<sup>22</sup> Rosi Braidotti, "A Critical Cartography of Feminist Post-Postmodernism," *Australian Feminist Studies* 20, no. 47 (2005).

<sup>22</sup> Deleuze and Guattari, *A Thousand Plateaus*.p36

machine, however this folding is not permanent and enduring but infinitely variable.<sup>23</sup> Thus, the space occupied by sexuality (as inside or outside or somewhere in between), or by LGBT rights is not fixed, and must be read as specific to the current, particular constitution of forces, matter and discourse. Yet, while what constitutes 'outside' or 'other' within a regime may vary, the structural position of this 'outside' and those who occupy it ('the collective figure of the Outsider'<sup>24</sup>) remains significant. Thus, I am interested here in not just the variable 'content' of what is other or outside, but the role played by this collective figure as it demonstrates both the overcoding structure of a regime, the possibility of escape in a deterritorialised line of flight and the way in which power seeks to block such flight and reappropriate such flows. In the figure of the scapegoat for example, Deleuze and Guattari note that:

'In the signifying regime, the scapegoat represents a new form of increasing entropy in the system of signs: it is charged with everything that was "bad" in a given period, that is, everything that resisted signifying signs, everything that eluded the referral from sign to sign through the different circles; it also assumes everything that was unable to recharge the signifier at its centre and carries off everything that spills beyond the outermost circle. Finally and especially, it incarnates that line of flight the signifying regime cannot tolerate, in other words an absolute deterritorialisation; the regime must block a line of this kind or define it in an entirely negative fashion precisely because it exceeds the degree of deterritorialisation of the signifying sign, however high it may be.'<sup>25</sup>

A link can be made here to Hanafin's application of Kristeva's notion of 'abjection' to questions of LGBT sexuality in Ireland. Abjection refers to that 'which is rejected from which one does not part'<sup>26</sup>: the object is that which is rejected but cannot be fully excluded. This process of abjection is bound up in the construction of both individual subjectivity and social body. Thus in the context of Irish postcolonial identity, Hanafin argues that 'the construction by the postcolonial elite of a subject of national self-identification entailed the rejection or expulsion of certain groups from the national family.'<sup>27</sup> In this way, lesbians and gay men were marked as the socially abjected.<sup>28</sup> As such, we can view sexual orientation as occupying a highly complex position in the Irish postcolonial social body – as the object it is that which is rejected but reclaimed before it can become a line of flight. Its contribution to the sustenance of the narrative of postcolonial Irish unity is in its negation and condemnation as that which is

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<sup>23</sup> Gilles Deleuze, *Foucault*, trans. S Hand (London: Continuum, 2010).p86

<sup>24</sup> Deleuze and Guattari, *A Thousand Plateaus*. p496

<sup>25</sup> Ibid. p128-129

<sup>26</sup> Kristeva cited in Patrick Hanafin, *Constituting Identity: Political Identity Formation and the Constitution in Post-Independence Ireland* (Aldershot: Ashgate, 2001).p21

<sup>27</sup> Ibid. p22

<sup>28</sup> Patrick Hanafin, "Rewriting Desire: The Construction of Sexual Identity in Literary and Legal Discourse in Postcolonial Ireland," *Social and Legal Studies* 7, no. 3 (1998).

associated with the outsider and most particularly with the English coloniser.<sup>29</sup> However, this negation is complex: sexual orientation cannot simply be denied or positioned outside the social or legal body – to do so would allow the possibility of escape into a line of flight that is uncontrolled or unmediated by law or by the totalising narrative of the heterosexual, patriarchal Irish family. Instead, the escape is cut off and overcoded, LGBT sexuality is posited only in negative terms and the wholeness of the Irish social body is (narratively) retained.

Thus, the question of inside and outside runs through questions of sexuality, law and nation. This complexity is illustrated in the 1993 *Criminal Justice (Sexual Offences) Act*, which was passed in the wake of the European Court of Human Rights Case *Norris v Ireland*.<sup>30</sup> The ECtHR held that the criminalisation of same sex activity between men constituted an unjustified interference with the applicant's right to privacy. The Act contains provisions related to the decriminalisation of same sex activity but also contains provisions pertaining to the tighter regulation and control of sex work. Hanafin argues that the inclusion of provisions restricting and controlling sex work in the same piece of legislation that concerned the decriminalisation of same sex activity was part of a 'trade-off' with the more conservative elements of Irish politics and society, which allowed the successful passage of the bill through parliament.<sup>31</sup> Put more simply, the price of increased freedom for men wishing to have sex with other men was tighter control of the behaviour of sex workers. He notes that

'At a deeper level, it reflects a more worrying aspect of postcolonial Irish society. In order for one socially abjected group to win greater legal recognition another such group must suffer. Thus, while gay men have received greater legal acceptance, the status of sex-workers as a socially abject group is heightened. Therefore, so-called progressive Irish society must continue to have socially abjected groups against which the dominant group identity can define itself.'<sup>32</sup>

Thus a situation arises in which even if the 'content' of the abjected group, or the scapegoat changes, its structural role as Other that is both within and without remains.

Thus, sexuality can be seen to occupy a highly complex position within the stratifications of particular societies and within the structure of international LGBT discourses. What is key here is the way in which different modes of sexual expression might be seen to occupy the position of the collective Outsider or the abjected in different instances. For example, we can certainly

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<sup>29</sup> Ibid.

<sup>30</sup> *Norris v Ireland* (App no 10581/83) (1988) 13 EHRR 149 cited in Hanafin, *Constituting Identity: Political Identity Formation and the Constitution in Post-Independence Ireland*. p57

<sup>31</sup> Ibid. p57

<sup>32</sup> Ibid. p57

point to instances in which LGBT sexuality is enunciated in negative terms as well as instances in which sexuality is aligned closely with deterritorialisation and the line of flight. Indeed, in some rhetorical constructions, homosexuality signifies (or appears to signify) the breakdown of family, state and the entirety of the social order. However, at the same time, there exists an increasing number of situations in which sexual orientation has become somewhat 'territorialised' within a particular signifying regime and as such – within homonationalist discourses for example – sexuality becomes part of a signifying regime by which an alternate scapegoat/Outsider is posited, or an alternate outside is folded. Thus sexuality can inhabit several different positions: either external to territorialised (usually state) power, or captured and territorialised in some way by power, and subsequently directed against a new 'outside'.

We could therefore suggest that the recognition of identities - in this instance in the codification of particular rights - forms a machine of capture.<sup>33</sup> Rights become a means of identifying, and thus restricting, what kind of action is, or will be, possible. Identity or identification as a legitimate sexual subjectivity marks a threshold through which a particular assemblage of sexuality changes – the point at which sexual otherness becomes recognisable or speakable by power as something within rather than something abject.

However, the productive inclusion by power that marks this form of capture does not occur only once. Birla uses Spivak to outline this dynamic in relation to gendered subalternity and suggests that for Spivak, subalternity marks both the inside and the outside 'autonomous from hegemony, but simultaneously inside as its condition of possibility.'<sup>34</sup> The gendered subaltern extends and transforms the analysis of subalternity – remaining 'deeply in shadow' even within the insider/outsider matrix that is already in operation. Thus, capture always exposes a new limit, a new unspeakable or unknown. A number of complex dynamics are in operation here: sexuality operates through particular assemblages in particular ways, such assemblages can be captured and productively included in the machine of the state, but this capture marks a threshold of change for the particular assemblage – as sexuality becomes stabilised or territorialised and therefore loses some of its nomadic, moving capacity. Once territorialised, this assemblage can become part of the constitution of a 'new' outside or limit of tolerability, but it also points to a remaining limit in relation to sexuality – that which cannot yet be spoken and remains in the shadows.

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<sup>33</sup> Ibid. p468

<sup>34</sup> Ritu Birla, "Postcolonial Studies: Now That's History," in *Can the Subaltern Speak? Reflections on the History of an Idea*, ed. Rosalind C. Morris (Chichester: Columbia University Press, 2010).p92

In discussing capture, Deleuze and Guattari refer specifically to state power and the dual poles of the king and law maker who capture or stratify the war machine.<sup>35</sup> Yet if we temporarily read sexuality as that which is nomadic and outside (the war machine) we can see how capture by state power impacts beyond the interaction of sexuality and state. Recognition/capture territorialises and thus changes sexuality's relationship with itself, reconstituting the limits of what is possible within the limits of state power. It is perhaps in this context that we can understand the particular legislative focus of many LGBT pressure groups and why this legislative focus is often exercised beyond the state borders within which such groups operate.<sup>36</sup> From a position of relative inclusion, the orientation towards power and transformation begins to change. This, I would suggest, marks a particular threshold in sexual activism – one in which forms of action transform from multiplicitous repetition of the virtual to specific reiteration through legal/political channels in particular states.

There are both practical and theoretical reasons why this threshold is so easily crossed by activists working in this sphere. Practically, reiteration rather than repetition achieves identifiable results that can be worked and planned for through recognised channels. Reiteration of particular rights concerns forms a framework for action in the face of suffering - and there are a large number of states in the world where, in legal or rights based terms, sexuality remains firmly outside. Such suffering forms a demand for action; rights form a path by which this action can progress. Furthermore, in an entirely practical sense, why should groups who have benefitted from productive inclusion or capture seek to entirely destabilise that which has been productive for them? Thus the limitations imposed on identity or action are accepted, increased recourse can be made to legal channels and the focus becomes not so much these limitations, but the challenges posed by the new 'outside', either in terms of seeking to repeat past successes elsewhere or constituting a new external other who poses a particular threat. That which remained in the shadows at the initial moment of capture is silenced or dismissed.

I have sketched out how such a dynamic of capture might occur in very broad terms. I do not want to suggest that this is what must always occur in relation to the interaction of sexual rights groups with state power. Instead, this is an attempt to use the idea of capture to think through some of the shifting positions that sexuality might occupy in relation to the state. Furthermore, the applicability of such a dynamic will depend very much on location – state power and capture do not operate in a uniform fashion, nor does a dynamic of 'othering'. What I think is particularly important however, is the way in which the mode of dealing with alterity tends to

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<sup>35</sup> Deleuze and Guattari, *A Thousand Plateaus*. p468

<sup>36</sup> This is not a denial of the legitimacy of looking outwards as well as internally in relation to LGBT activism, but is perhaps a note of caution in relation to the non-neutrality of the power dynamic in operation here.

remain the same – the other is encountered by shifting it on to our own terms, or our own frame of reference. Thus in this case, sexuality becomes quickly bound up within a dynamic of recognition and misrecognition.

This dynamic is particularly important when we consider that despite the conjunction of seeing with knowledge in Western thought, the relationship between the two (and therefore the act of recognition) is less natural than is often assumed. At the level of active rather than passive synthesis a selection is taking place.<sup>37</sup> Puar cites Butler in order to suggest that seeing is not an act of direct perception but the racial production of the visible, the operation of certain constraints on what it means to see: '[t]herefore the act of seeing is simultaneously an act of reading, a specific interpretation of the visual. But this reading passes itself off as a seeing, a natural activity, hiding the "contestable construal" of what is seen.'<sup>38</sup> There are a number of different strands to this argument, the first concerns perception: as Deleuze notes in his work on cinema, perception is always 'less' – we perceive the 'thing' minus that which does not interest us.<sup>39</sup> This act of perception is further complicated in that the way in which we interact with alterity, is already constructed, already political but already always constituted as accepted. This is particularly interesting from the perspective of LGBT rights campaigning given the primacy that is given to the act of 'coming out', of making oneself visible (and thus perceivable) as LGBT, within mainstream sexuality rights campaigning. In the context of the primacy of the visual, it is not surprising that this tactic should be so widespread, but it does perhaps bring into sharp relief the paradox of approaching and perceiving sexuality primarily through a mode of visibility, when sexuality itself is so often embodied and experienced through modes other than the visible. An interesting link can therefore be made here to visibility and power. Braidotti notes that the primacy of vision has been challenged by feminist theorists and highlights in particular Haraway's critique of the logocentric culture of disembodied vision as opposed to a more accountable and embodied form of seeing (or perhaps perceiving). Thus, we can draw a clear link between a supposedly objective and detached form of vision, visibility and power as opposed to the embodied and 'invisible anonymity of the marginalized.'<sup>40</sup> Braidotti notes further that 'power today is a matter of selection and control, entitlement and access: it is bio-power, centred on the body in its material and immaterial manifestations.'<sup>41</sup> The visible, nameable sexual subject is infinitely more manageable and less threatening than the complex,

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<sup>37</sup> Claire Colebrook, *Deleuze: A Guide for the Perplexed* (London: Continuum, 2006). p54-56 Gilles Deleuze, *Difference and Repetition*, trans. P Patton (London: Continuum, 2011).

<sup>38</sup> Puar, *Terrorist Assemblages: Homonationalism in Queer Times*. p183

<sup>39</sup> Gilles Deleuze, *Cinema 1: The Movement Image*, trans. Hugh Tomlinson and Barbara Habberjam (London: Athlone Press, 1986). p63

<sup>40</sup> Rosi Braidotti, *Transpositions* (Cambridge: Polity, 2006).p53

<sup>41</sup> Ibid.



changing material body through which sexuality is known and experienced in multiple different ways.

Thus, the point of contention here is our uneven access to these modes of production of visibility and knowledge. This unevenness contributes to the construction of a doxa, based on incomplete or impartial knowledge, experience or perception. Mohanty comments upon this dynamic, in relation to feminist struggles, tying it specifically to particular, naturalised forms of subjectivity, noting that perhaps due to this unevenness of not only subject production, but power relations, experience is written as simultaneously individual (body/psyche of woman) and general (collective women). She notes that:

‘There seems to be two problems with this definition. First, experience is seen as being immediately accessible, understood, and named. The complex relations between behaviour and its representation are either ignored or made irrelevant; experience is collapsed into discourse and vice versa. Second, since experience has a fundamentally psychological status, questions of history and collectivity are formulated on the level of attitude and intention. In effect the sociality of collective struggles is understood in terms of something like individual group relations, relations that are commonsensically seen as detached from history.’<sup>42</sup>

Thus, experience is constituted in such a way as to devolve upon a limited notion of individual selfhood and is used to tie individual women to the collective sisterhood regardless of class, race, nation and sexualities. A particular social relation is privileged, depoliticised and dehistoricised and experience remains firmly anchored in particular notions of the individual self. In a similar way, Ahmed notes that the encounter between self and other always implicates broader systems of knowledge exchange.<sup>43</sup> The encounter has a spatial and temporal arrangement that Mohanty suggests is often unacknowledged.

In a similar vein, Puar suggests that identity can be viewed as retrospective ordering. Identity codifies but then constructs itself as always already there.<sup>44</sup> In this way, we could perhaps suggest that the dimensions of past and future overcode the moment of encounter, smothering it. The encounter/alterity cannot be or become because it is always already implicated within a particular frame of seeing and knowing. In essence, there is a ‘colonisation of the timeline’ or the operation of temporal mechanisms that allow the constitution of some events as historically significant and others as meaningless.<sup>45</sup> As such what is significant is not the encounter or

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<sup>42</sup> Chandra Talpade Mohanty, *Feminism without Borders: Decolonizing Theory, Practicing Solidarity* (London: Duke University Press, 2003). p114-5

<sup>43</sup> Ahmed, *Strange Encounters: Embodied Others in Postcoloniality*. p37 p152

<sup>44</sup> Puar, *Terrorist Assemblages: Homonationalism in Queer Times*. p215

<sup>45</sup> Elizabeth Freeman, "Time Binds, or, Erotohistoriography," *Social Text* 84-85 23, no. 3-4 (2005). p58

alterity itself, but the ability of the encounter to be rendered within a socially coherent whole. Thus, a key vector of analysis might be the self-maintenance of a system in relation to how one might go about making political demands.

Such concerns are clear in many analyses of NGO operation in the sphere of sexuality politics. Swiebel notes for example, that the process of placing issues onto the agenda of a particular political or legal organisation is often simplified when activists 'frame' their issue in such a way as it can be easily linked to issues that are already part of the accepted agenda.<sup>46</sup> For example, South Africa's groundbreaking constitutional protection of sexual minorities was part of a broader framework of change. Similarly in the EU, there was both the possibility for framing sexual rights in terms of economic subjectivity and of coat tailing on anti-racist discrimination law. Moreover '[f]raming the issue in human rights terms touched the EU at the core of its soul, linking mythical concepts such as the 'European identity' to the problems of credibility and popular support.'<sup>47</sup> However, if these concerns are articulated outside a recognisable frame, the possibility of being accurately heard recedes:

'if articulated outside a liberal democratic frame, the claim to human rights has little purchasing power. Deployment of political signifiers makes the most strategic sense when this happens within the frames that give them meaning. The gap between theorizing and activism can occasionally undermine the legibility of the frame; this is particularly risky when the readers are political elites. For example, rights claims in the streets of Soho became much more legible when the activist group Stonewall translated it into 'equality' and 'justice' in the halls of Parliament.'<sup>48</sup>

The obvious observation here is that if rights claims between Soho and Westminster require mediation, then rights claims when the spatial, temporal, linguistic or experiential gap is even wider will require mediation to the point that they may become almost unrecognisably detached from their original ground.

The question then, is not just who can speak, but who can speak or present themselves in a way that will be recognised and appropriately translated? Or how can activists control or influence the way in which they are perceived? In demonstrating this, Seckinelgin uses examples from research in both India and Africa to demonstrate a global process of constitution of identities in which particular categories become reference points for both policy actors and their target

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<sup>46</sup> Joke Swiebel, "Lesbian, Gay, Bisexual and Transgender Human Rights: The Search for an International Strategy," *Contemporary Politics* 15, no. 1 (2009). p21

<sup>47</sup> Ibid. p30

<sup>48</sup> Angelia R. Wilson, "The "Neat Concept" of Sexual Citizenship: A Cautionary Tale for Human Rights Discourse," *Contemporary Politics* 15, no. 1 (2009). p82

groups. Thus, one group in Africa uses the terminology LGBTI, while not actually being entirely sure that intersex people exist. One activist goes on to explain his choice of terminology:

‘G – Well I am using it because it is the international language. I have been going to regional meetings and it is their language. [the language] Makes us part of the larger group [international] for the possibility of funding and support when we need it. But people, no, they don’t really use LGBTI, even men who are talking to us, it takes sometime before they call themselves gay.’<sup>49</sup>

Terminology here is not just a question of using different nomenclature to address the same behaviours or identity as the way in which an issue is framed will shape the ‘solutions’ that are offered to the particular problems experienced. One of Seckinelgin’s Hijra interviewees made the point that in India ‘In the national HIV/AIDS plan we are included under MSM and there are no specific concerns or attention paid to Hijra-tg issues. MSM is about behaviour and Hijra-tg is a culture. We need the particular focus on Hijra and their social environment. The needs are different and the implementations, spaces will be different.’<sup>50</sup> The way in which something is made visible affects the way in which needs can be addressed. This dynamic also works in the opposite direction, to the extent that the framing of issues in particular terminology becomes both an expectation, but also more worryingly, a sign of ‘progress’ along a particular teleological trajectory. As such, Hemmings notes the way in which bisexuality is viewed by some commentators as a stage prior to the formation and embracing of a particular homosexual identity. There is no space for bisexuality to exist as itself, rather in such (Western) lesbian and gay writings, bisexuality forms part of a pre-modern stage of sexual orientation that precedes the visibility of lesbian and gay subjects and cultures.<sup>51</sup> Such interpretations both ‘teleologise’ the possibility of sexual behaviour and draw attention from the particularities of identity formation specific to the ‘lesbian and gay’ identities that now increasingly circulate in global gay formations.

### **Narratives of identity and injustice: position, personality and perceptions in sexual orientation politics**

The problem I am engaging with here is the question of who can speak and how they do so, who has access, or even who makes the best test case for a particular issue. Most controversially, this dynamic leads Long to suggest that the groundswell of activism and support for several

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<sup>49</sup> Hakan Seckinelgin, "Global Activism and Sexualities in the Time of HIV/AIDS," *Contemporary Politics* 15, no. 1 (2009).p104

<sup>50</sup> Ibid.

<sup>51</sup> Clare Hemmings, "What's in a Name? Bisexuality, Transnational Sexuality Studies and Western Colonial Legacies," *International Journal of Human Rights* 11, no. 1-2 (2007). p25

individuals who were hanged in Iran, could only happen because the boys and men involved were named and recognised (by others, not necessarily themselves) as gay – ‘sympathy depended on identity.’<sup>52</sup> This is a very strong accusation against global gay rights activism and resulted in a great deal of controversy. Moreover, to acknowledge the complexity of the case that Long is examining is not to deny the suffering of LGBT identified individuals in Iran.<sup>53</sup> However, I would like to step back somewhat from these controversies in order to address the slightly different point that Long is hinting at here: the issue of *how* injustice is recognised and the way in which events of injustice must attach to particular victims in particular ways. Miller makes this point in relation to women’s rights when she recounts the way in which the deployment of the narratives of victims and of female suffering was central to the negotiations that resulted in the recognition of rape as a war crime. While the strategic aim of the achievement of a certain agreement was successful here, it was done so through the use and reinforcement of certain narratives – most pertinently the narrative of women as weak and in need of protection. The question Miller leaves us with is one of what sacrifices were made in terms of the recognition of female agency in order to achieve the more material legislative goal.<sup>54</sup>

Miller’s point here is complex: as an activist involved in the negotiations surrounding the push to convince mainstream human rights organisations to accept sexual violence against women as human rights issues, she is justifiably proud of what has been achieved. However, her pride is tinged with a note of caution – working against rape gave ‘credibility and respectability’ and brought recognition of the harm done to women as a global human rights problem. But the repetition of particular narratives of womanhood, particularly those pertaining to victimhood, respectability and protection necessarily precludes a more nuanced consideration of women’s agency in human rights terms.<sup>55</sup> Thus, international human rights gains are achieved in part through the repetition of narratives of gendered stereotype. Nadj continues this discussion of the removal of women’s agency through an analysis of the coding of violence against women in the former Yugoslavia as ethnically marked: in the jurisprudence of the International Criminal Tribunal for the former Yugoslavia (ICTY) and in some feminist commentaries, Bosnian Muslim women were raped *because* they were Muslim.<sup>56</sup> Crudely put, the rape is read as a crime against the collective identity of a group, culture, identity or nation. Thus a dual narrative of already

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<sup>52</sup> Long, "Unbearable Witness: How Western Activists (Mis)Recognize Sexuality in Iran." p125

<sup>53</sup> Human Rights Watch, "We Are a Buried Generation: Discrimination and Violence against Sexual Minorities in Iran."

<sup>54</sup> Alice Miller, "Sexuality, Violence against Women and Human Rights: Women Make Demands and Ladies Get Protection," *Health and Human Rights* 7, no. 2 (2004).

<sup>55</sup> Ibid.

<sup>56</sup> Daniela Nadj, "The Culturalisation of Identity in an Age of 'Ethnic Conflict' - Depoliticised Gender in Icty Wartime Sexual Violence Jurisprudence," *International Journal of Human Rights: Special Issue 'Democracy, Human Rights and Power'* 15, no. 5 (2011). p656

coded victimhood and ethnicity combine both to preclude any possibility of female agency or action and to displace the focus on individual harm experienced by the raped woman. The raped Bosnian woman is always and only a victim who must be saved. 'The women in this scenario are represented as the opposite of the abstract, rational subject of international law – they are passive bystanders utterly subjected to their fate at the hands of their male captors as the central protagonists of war.'<sup>57</sup>

There are several levels to this deployment of narratives of identity and victimhood – the first is the language of identity through which the suffering victim is recognised and classified: gay, lesbian, woman, Muslim, etc. The second level constitutes the positionality of this identity in relation to particular spheres of centralised power – the way in which it is recognised and articulated and the way in which this recognition immediately emplaces an identity within an arborescent, hierarchical frame in which its position is predicated on its relative distance from a standardised 'norm'. A third consideration is the way in which these proximities and spatialisations relate to wider spatialised narratives of inside and outside or to what is acceptable and unacceptable according to the hierarchical power relations which both recognise and emplace identities and shape the wider narrative and normative constructions through which such identities can interact. Thus, 'women as victim' resonates strongly in considerations of women's rights and Islam as 'other' or Islam as homophobic is a narrative that activates very strongly in response to reports of state executions of minors for sexual crimes – identities, positionalities and narratives at play here are all assumed to be easily recognisable and thus easy to emplace and repeat.

What this can contribute to however, is a politics that takes place through personalisation or through the representation and embodiment of injustices by particular cyphers rather than a politics which tries to engage with injustice. We already 'know' that gay people face execution in Iran, we already 'know' that Islam is homophobic and this becomes the starting point for action. This is a very difficult dynamic to face – all action must make some kind of assumptions in order to facilitate any movement, yet I want to suggest that we must question why some stories resonate so forcefully. An affective response on the basis of 'what we already know' may not always be enough.

This issue of personalisation of injustices has several dimensions. In terms of the visibilisation or figuration of victims, Braidotti makes the point that the embodiment of female subjects occupies both the hypervisible and the faceless:

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<sup>57</sup> Ibid. p655

‘This results in a positioning of embodied subjects, and especially the female ones, at the intersection of some formidable locations of power: visibility and media representations produced a consumeristic approach to images in a dissonant or internally differentiated manner. Female embodied subjects in process today include interchangeably the highly groomed body of Princess Diana (like Marilyn Monroe before her) *and* the highly disposable bodies of women, men and children in war torn lands’<sup>58</sup>

Braidotti’s point highlights the movement between the highly visible icon that embodies a particular locus of power and the faceless, almost interchangeable, victim, refugee, asylum seeker. She argues that these two examples ‘represent for me two sides of the same coin, which is the saturation of our social space by media images and representations.’<sup>59</sup> We could perhaps repeat Braidotti’s dynamic in relation to LGBT issues – the hyper visibility of Elton John or the more appropriately troubled George Michael, or even the named and commemorated victims such as Matthew Shepard, or the outspoken activist such as Peter Tatchell, in contrast to the myriad faceless refugees from homophobic regimes, lesbian victims of corrective rape in Southern Africa, or victimised suicidal teenagers in the Deep South of the United States. The point, however, is that these representations exist within a particular dynamic of knowledge construction founded upon a particular regime of signs. It is a similar dynamic that unproblematically reads Muslim society as homophobic and synthesises this reading into a ‘progressive’ narrative.

Yet this is not the only mode of ‘personalisation’ of injustices. Representation of victimhood exists alongside representation of ‘activists’. In a roundtable discussion of this issue, Tamsila Tauqir, co-founder and voluntary director of the Safra Project makes the point that:

‘We talk about issues and then it comes down to personalities, and that has something to do with Western culture, I believe. I’m not going to speak on behalf of the Global South because I don’t live there, but in terms of the west I do feel very much that arguments are made through personalities, on presentations and celebrity status, it’s not just done on issues anymore.’<sup>60</sup>

Thus, certain personalities become both the overcoding ‘voice’ of a gay liberatory human rights discourse and a point of critique for much of the limitations of the discourse itself. In relation to the issues that Tauqir is referencing in her statement, we might address the way in which the ‘event’ of, for example, a prominent LGBT campaigner such as Peter Tatchell, becomes well recognised and identified in a particular way that goes beyond his own actions. We might

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<sup>58</sup> Braidotti, *Metamorphoses: Towards a Materialist Theory of Becoming*.p17

<sup>59</sup> Ibid.

<sup>60</sup> Tamsila Tauqir et al., "Queer Anti-Racist Activism and Strategies of Critique: A Roundtable Discussion," *Feminist Legal Studies* 19 (2011). p180

suggest that Tatchell represents the counter-actualisation of a problematic in a particular instance at a particular time. Attempts to transfer this counter-actualisation to different sets of circumstances or different moments leaves Tatchell open to particular critiques.<sup>61</sup> However, both Tatchell the individual, Tatchell the representation of a specific form of resistance, and the critiques to which he is exposed when engaging in this form of resistance, exist within a particular frame of knowledge production, and as such, productive discourse becomes lost within personalised, representational recriminations. To add a further layer of complexity to this issue, the creation of the partial representation 'Tatchell' as a symbol for gay liberation struggles places further pressure on the individual Peter Tatchell to act and to comment when abuses of LGBT rights are uncovered. In the dualism of hypervisibility/facelessness posited by Braidotti, we can perhaps add that while facelessness becomes a silencing move, hypervisibility can bring with it a compulsion to speak. This is not to say that Tatchell must always act in a certain way or must choose only one path of action, or that he has no agency in how and when he expresses his opinions, but perhaps that he no longer has the option of anonymity or silence in relation to these issues. As a symbol of UK gay rights work, Tatchell is, to some extent, enmeshed in networks that are extra-individual – those of media, representation, communication – and this may allow more effective action (or at least a larger platform from which to speak), but may also place a greater imperative to act, to speak, to be a focal point for both activism and critique, whether such attention is wanted or not. As Deleuze comments, '[t]he infamous man's a particle caught in a shaft of light and a wave of sound.'<sup>62</sup>

In a different context, Douglas references both Audrey Lourde and Sara Ahmed to note the way in which the highlighting of (unintended) racism in predominantly white feminist environments, can lead to the individual who has raised the issue being treated as the source of the 'problem' rather than the problem of racism itself.<sup>63</sup> As such, Ahmed points out that 'the exposure of violence becomes the origin of violence.'<sup>64</sup> In essence, I am suggesting that a discourse that is bound up in issues of representation (and thus recognition) will by necessity have to approach problematics at a degree of remove, as these problematics must be mediated to some extent, by our representations in order to assimilate them within particular frames of the visible and articulable. This impacts heavily on the kind of politics that can occur and the

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<sup>61</sup> See eg Jin Haritaworn, Tamsila Tauqir, and Esra Erdem, "Gay Imperialism: Gender and Sexuality Discourse in the 'War on Terror'," in *Out of Place: Interrogating Silences in Queerness/Racality*, ed. Adi Kuntsman and Esperanza Miyake (London: Raw Nerve Books, 2008). Stacy Douglas, Suhraiya Jivraj, and Sarah Lamble, "Liabilities of Queer Anti-Racist Critique," *Feminist Legal Studies* 19 (2011).

<sup>62</sup> Gilles Deleuze, *Negotiations* (Chichester: Columbia University Press, 1995). p108

<sup>63</sup> Stacy Douglas, "On Defending Raw Nerve Books: Or, the Stuff of Good Feeling," *Upping the Anti: A Journal of Theory and Action* 11 (2010).

<sup>64</sup> Ahmed, cited in *Ibid.*

kind of engagements that can be made. Ahmed raises this point in relation to controversies surrounding responses that have been made to instances of queer anti-racist critique:

‘Counter-assertions are often stronger than countering the original assertion in the form of a negative claim (‘I am not racist’); they often make additional assertions in the form of a positive claim (‘I am anti-racist’). These responses fail to respond to the actual critique of racism as they take the form of self recognition (‘I don’t recognise myself in the critique of racism’; ‘I recognise myself as anti-racist’). To respond to a critique requires not referring to what is said or written back to oneself (self-reference makes the object of a critique into the subject) but engaging more closely with what is being asserted. When self-reference happens too quickly (when someone responds by defending themselves against a critique by hearing it as an attack on their credentials), the opportunity for an engagement is lost.’<sup>65</sup>

The problem at play here is perhaps one of the personalisation of larger narratives through icons that become representations - whether this representation is the oppressed Muslim lesbian or the embattled human rights campaigner. Each presentation rests at a point of visibility of power and discourse that shapes and is shaped by the actors that participate in it. The issue arises when the positioning of these representations detach and replicate to the extent that they take up all available space for talking about domination and subordination. For example, it is natural that when faced with a victim/oppressor binary, Tatchell will emplace himself and identify with the victim side of the duality. And while this isn’t a false emplacement, the positioning of Tatchell and all that he signifies within a highly reductive binary severely limits the possibilities for action. In essence, the problem is not Tatchell or even critiques of his activism, but the binary itself – the dynamic of knowledge production that creates an either/or antagonism and limits agency to the possibility of picking a side. This framework is at once reductive and abstracting and serves to obscure the many vectors through which power and injustice can circulate. This is why a methodological approach that seeks to go beyond binaries and explore the multiple flows and problematics in circulation is so important: a method that reduces questions to simple either/or divisions has the potential to create false solutions to false (or badly posed) questions. Though more complex and less clear cut, a ‘multi-sided’ method offers more long term possibilities for more effective analysis and engagement with the multiplicity of issues that shape each problematic assemblage.

This frame of representation, reduction and abstraction interacts with the particularities of experience. Thus Ahmed suggests that ‘white queer subjects might be very aware of heteronormativity because of being queer (queerness as estrangement from social and sexual

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<sup>65</sup> Sara Ahmed, "Problematic Proximities: Or Why Critiques of Gay Imperialism Matter " *Feminist Legal Studies* 19 (2011). p122



norms) but not be aware of whiteness because of being white (whiteness as an alignment with social and racial norms).'<sup>66</sup> The final connection to make then, is the way in which the nature of injustice is specifically situated and emplaced – individuals experience violence, discrimination and inequality as emplaced, enfleshed persons. However, a regime of representation, reduction or abstraction as explored above reduces the possibility of recognition of the particularities of what each individual experiences. We assume that the experience of suffering is immediately accessible and we want to empathise with the victim, but as Butler points out, we must recognise the factors that mediate our approach to both visibility and to the experience of suffering. I should note here that this is not a denial of the possibility of agency, nor am I suggesting that LGBT activists and campaigners should not be critiqued or held accountable for their actions; instead, I am viewing these interactions and individuals as events and attempting to sketch out which virtualities they actualise and how the fact of this actualisation and the language with which we talk about such actualisations frame how we envisage and emplace ourselves within the world.

### **Problematising (narratives of) inclusion and the possibility of withdrawal**

In multiple different ways then, to live sexual otherness, to engage in activism in this area or to attempt to engage in critique is to confront multiple vectors of power and identity. And one of the most important sites of engagement, I want to suggest, is with the self. Povinelli gives an interesting example of this in her article *Disturbing Sexuality*:

“‘This is me,’ I thought when I saw two women kissing in Santa Fe, New Mexico. ‘This is me,’ I thought when I went hunting with a group of women and men from Belyuen. But what is ‘this’ and ‘that’? – an identity, a mode of life, a form of association? Surely I was hailed in both. But as surely I was not hailed into an equivalent social form or mode of being.’<sup>67</sup>

‘Simply put’ she goes on to argue, is the fact that what she is seeing and experiencing here is not objectively what is there, and certainly not what her friends are seeing and experiencing. The danger that Povinelli highlights for me is one of forcing connection without being very aware of the different worlds that individuals inhabit, forcing others to inhabit our own particular framework for understanding gayness. And this, I would argue, is made all the more difficult when one inhabits a group or a position that isn’t quite ‘respectable’ or quite ‘mainstream’ – the temptation is to look for ‘others-like-me’, to affirm one’s identity and celebrate this assumed connection. Through such identifications, new narratives of authenticity are constructed. However, to work in this way harks too closely to biological reductionism or even some

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<sup>66</sup> Ibid. p128

<sup>67</sup> Elizabeth Povinelli, "Disturbing Sexuality," *South Atlantic Quarterly* 106, no. 3 (2007). p567

outdated mode of anthropology that looks for the 'modern primitive' in order to see the truth of our origins. The underlying assumption or logical conclusion to this approach is that there is a teleology that assumes that sexual otherness is always heading in one particular direction.

In relation to this recognition as 'not-quite-mainstream', Ahmed's work on nomadism is interesting: she points out that certain conceptions of nomadism or migration presume a belonging or kinship based on nothing more than a shared nomadic or displaced status. Essentially, what those who are nomads share in common is an uprootedness from whatever they conceive of as 'home': they share a negativity, a lack of something or a displacement from the norm. She argues that this is not enough; that migration needs to be understood in its specificity and that 'estrangement is always estrangement in a particular time and place. To universalise estrangement as that which brings us together is to conceal how estrangement marks out communities.'<sup>68</sup> She calls instead for an 'uncommon estrangement' – a process where people are known as not known – and an attempt to know, to breach difference or to understand and find a way to negotiate this gap in order to consciously create a community.<sup>69</sup>

While we should not simply lift Ahmed's framework and apply it wholesale to understandings of identity, there are some interesting points here. First, creating similarity based on a shared sense of not being something – in her case 'at home' or in our case perhaps 'heterosexual' – can be a false similarity, or a surface similarity that is liable to break down on first inspection. Related to this idea is a sensitivity to the specificity of difference, both as it is embodied by particular individuals and groups and the context from which such individuals might be estranged.<sup>70</sup>

Furthermore, while Ahmed argues that it is perfectly possible to create a community based on the shared experience of not being fully 'at home', this community is something that must be negotiated, it is not a given, but a creation of constantly shifting boundaries that must be addressed and confronted. Community is created in this understanding, not through an insulation of those seen as a similar against what is perceived to be different, but by a deliberate reaching out to difference and forging of the gap in between, even if this process can never, or should never be completed. Drucilla Cornell calls this the disrupting of totality which 'gives us a glimpse of what things in their interrelatedness might become if they were allowed to rest in

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<sup>68</sup> Ahmed, *Strange Encounters: Embodied Others in Postcoloniality*. p93

<sup>69</sup> Ibid. p80-93

<sup>70</sup> It is interesting to consider Ahmed through a paradigm that sees 'home' as more than just a physical place and the possibility of estrangement as being psychological rather than physical removal from what is known. In essence estrangement might occur because of sexual difference, but this makes it even more important to focus on the circumstances and particularity of the situation in which such estrangement occurs.

their affinity, rather than forever being stuffed into a new system of identification'.<sup>71</sup> The totality to be disrupted includes the self and the discourses of knowledge production that produce both self and society as untroubled wholes.

The use of such a model demands a degree of humility: it demands that we draw back and refrain from trying to immediately integrate 'the other' into our own conceptual framework and that we conceive of the world in such a way that alterity has the space to remain as such. For Deleuze and Guattari, this might be the moment of revolutionary withdrawal, the moment of movement away from the goal: 'the revolutionary knows that escape is revolutionary - *withdrawal, freaks* – provided one sweeps away the social cover on leaving, or causes a piece of the system to get lost in the shuffle. What matters is to break through the wall.'<sup>72</sup> The question then might be, in a regime of visibility, representation and articulation, what is the potential of deliberately not responding? Tauqir notes that in response to controversy, she felt that the capacity to 'not speak' and to disengage from particular discussions was particularly important:

'In terms of responding to challenges, and this is a personal style, I feel very strongly about not speaking, about being silent in some circumstances...I think the right not to speak, not to engage in discussions and rhetoric that is going to damage us or be turned against our communities in the long term, is important, because we live in these communities, we go home and we eat with them. For us to then criticise on that platform, the homo-nationalist wouldn't have done us any favours or helped our stakeholders or the people that we try and work with every day.'<sup>73</sup>

Yet, can refusing to speak also form a disavowal of responsibility? Silence or withdrawal here is not just a disengagement or removal, but a positive and potentially disruptive act with implications and consequences for more than the individual engaged in the act of not speaking - with good reason, Deleuze and Guattari refer to withdrawal as 'breaking through the wall'. Thus, in a regime where the subaltern cannot speak at all, is not the pressing imperative to try and do something? Braidotti argues that there is a 'bond' between the 'many and multi-layered 'others' of the former phallogocentric empire – women, natives, natural infantilized and criminalized others.'<sup>74</sup> If, following Spinoza and Deleuze, humans are defined by their conatus, their connectability, we must question how to withdraw in a responsible fashion – how to withdraw without simply engaging in a disavowal of this bond. Or on the opposite vector, we might question why some attempts to act fill us with unease - why, for example, we might

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<sup>71</sup> Drucilla Cornell, *Philosophy of the Limit* (London: Routledge, 1992).p31

<sup>72</sup> Gilles Deleuze and Félix Guattari, *Anti-Oedipus*, trans. Robert Hurley, Mark Seem, and Helen R. Lane (London: Continuum, 2011). p277

<sup>73</sup> Tauqir et al., "Queer Anti-Racist Activism and Strategies of Critique: A Roundtable Discussion." p179

<sup>74</sup> Braidotti, *Transpositions*.p130

celebrate the release of two 'gay' Malawian men, but feel repulsion at the knowledge that their release may have been connected to international pressures and threats of the withdrawal of aid money and fear that these international pressures might lead to the possibility of a more long term backlash for LGBT Malawians.<sup>75</sup> Similarly, while we may appreciate the efforts of those UK lawyers who are defending gay rights cases in courts outside the UK, seeking landmark rulings and legal change in countries that still criminalise homosexuality, once we shift to a view that encompasses not just the issue of legal recognition, but of social and cultural change and of power imbalances between the global North and the global South, it is difficult to wholly endorse their actions or to agree that a solution that aims at top down legislative change is the most effective means of securing long term and safe progress for LGBT individuals. As such, while we might applaud the intentions and sincerity of individuals involved, we might simultaneously cringe away from the power relations in which their actions implicate us. Indeed I would argue that rights offer a very problematic redress for injustices on grounds of sexual orientation, especially when they are deployed as the main or only strategy of change. Moreover, the strategy of litigating in overseas courts could easily lead to a painfully ironic situation in which a UK lawyer finds himself or herself arguing in the courts of a former colony for the overturning of a law that the Colonial British authorities were responsible for first introducing. Such an image would only feed in to arguments of homosexuality as a Western imposition and to accusations of neo-imperialism.<sup>76</sup>

I would suggest perhaps, that withdrawal involves a repudiation of particular systemic violence, but also throws us into unknown smooth space, or removes and destabilises our frame for operation. Remaining 'within' maps a clearer path for action, but implicates us in the violence of the system. As Deleuze and Guattari remind us however, within and without are not stable constructions, and as we confront these multiplicities, they may shift around us – to withdraw may not necessarily mean to abandon, as even the position of 'outside' represents not unassailable difference but a refolding of multiplicities. Withdrawal is a complicated act, particularly when understood from a perspective of embodied connectivity. Withdrawal and destabilisation of a framework affects a break not just for those undertaking the withdrawal or refusing to speak, but also for others implicated within the same framework. Tauqir is correct

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<sup>75</sup> eg 'Malawi Pardons Jailed Gay Couple' <http://www.bbc.co.uk/news/10190653> accessed 25/05/2012

<sup>76</sup> It could be argued that the actions of organisations who litigate these cases are simply a counter-measure to the actions of (primarily) American evangelical groups who preach anti-homosexuality and 'gay therapy' particularly in Southern Africa. However, I find framing the debate in terms of a conflict or culture war between two different Western groupings, that is being played out in the global South, using the lives and safety of LGBT individuals as pawns, to be deeply troubling, racist, neo-imperialist and a framing that works to effectively silence and disempower those who live in the global South, LGBT or otherwise. I would prefer to acknowledge the intense problematics of differential power relations in discourses of LGBT/anti-LGBT actions but refrain as far as possible from reinforcing them or endorsing a viewpoint that this is the correct way to secure meaningful gains for LGBT people in the global South.

in highlighting the need to 'not speak' but perhaps even more important is her recognition of the situated nature of this withdrawal and the relative consequences of the act. Thus Tauqir may withdraw but others may find themselves enmeshed to the extent that an act of withdrawal is potentially damaging. The question is not one of an act of withdrawal being always right or always wrong, but of recognising the multiple different connections and intensities implicated in each act of withdrawal and attempting to act in such a way as to creatively repeat these connections and tendencies in accord with the exigencies of a particular, material situation. In this way, the site of withdrawal becomes unregulated space in the sense that it not only holds the possibility for not speaking or even not working towards legal regulation, but it also holds no imperative or prescription in relation to the mode in which a withdrawal might take place.

### **Beyond narratives of identity: Sexual orientation politics as haecceity and movement**

The issue of withdrawal and confrontation is a singularly difficult problematic. In particular, it should be noted that there is no single way to act in response to such ethical demands. We might begin to approach this problematic through Hemming's consideration of feminist theorising of empathy. In a range of feminist epistemologies, empathy becomes a means of undoing representational violence, of approaching and appreciating the other. While this is admirable, Hemmings argues that although empathy may undo the subject/object relationship and replace it with a subject/subject relationship, the two subjects remain unequal as they are held apart by relations of recognition that are temporally as well as spatially managed.<sup>77</sup> There are still particular criteria for the recognition of subjectivity in operation, even if these criteria are mediated through empathy.

At issue, Hemmings suggests, is the need to question our own status as a subject. This critique is similar to that directed at Deleuze/Guattari and Foucault by Spivak, but also resonates in other feminist critiques of Deleuze in particular and more generally, with post-structuralist activations of femininity or the feminine as a critique of rationality. As De Lauretis notes:

'So it is, that by displacing the question of gender on to an ahistorical purely textual figure of femininity (Derrida); or by shifting the sexual basis of gender quite beyond sexual difference, onto a body of diffuse pleasures (Foucault) and libidinally invested surfaces (Lyotard), or a body-site of undifferentiated affectivity, and hence a subject freed from (self)-representation and the constraints of identity (Deleuze); and finally by displacing the ideology, but also the reality – the historicity – of gender onto this diffuse, decentred, or deconstructed (but certainly not female) subject – so that paradoxically again, these theories make their appeal

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<sup>77</sup> Clare Hemmings, *Why Stories Matter: The Political Grammar of Feminist Theory* (Duke University Press, 2011). p213

to women, naming the process of such displacing with the term *becoming-women* (*devenir-femme*).<sup>78</sup>

The question of 'becoming-woman' is a particular point of tension. Deleuze and Guattari make it clear that the deployment of the figure of becoming-woman does not obviate the need or legitimacy of pursuing the 'molar' aims of the women's movement. Yet this does not entirely remove the contradiction at play here. To return to Hemming's exploration of subject/object vs. unequal subject/unequal subject relationships we might note, with Braidotti, that Deleuze-Guattarian 'becoming-woman' that disrupts and overcomes sexual difference, 'suggests a symmetry between the sexes, which results in attributing the same psychic, conceptual and deconstructive itineraries to both.'<sup>79</sup> Becoming-woman ignores the specificity of women's efforts to overcome particular forms of sexual difference and the particular experiences of women (differently) situated within these regimes of difference. There is a danger here of 'organising femininity without women'<sup>80</sup> or even of talking of the feminine without reference to the lived experience of womanhood.<sup>81</sup> Thus, becoming-woman posits a revolutionary subjectivity by dissolving a feminist consciousness. For Braidotti, this is theoretically problematic as it suggests a symmetry between the sexes or an equivalence of positionality for both visibility and speech, that is by no means evident. Femininity here seems ambiguous and constructed with little attentiveness to the actuality of womanhood: when Deleuze and Guattari contemplate the question 'What might happen if a woman herself becomes a philosopher?', Braidotti observes: 'Might I be so bold as to venture that only a non-woman would contemplate this possibility as a great novelty, an unprecedented event or a catastrophe internal to the philosophical order and capable of subverting it?'<sup>82</sup>

There is then, a contradiction, or at least an ambiguity, at work here. However, an acknowledgement of this contradiction might allow us to unpick various useful strands that can be applied more generally to questions of subjectivity and becoming. Braidotti's critique suggests that becoming-woman is inadequate as a figure of thought when used in a sexually undifferentiated manner. The point to be made from this critique however, is one which draws us back to the significance of a 'politics of location':

'Politics being no more than a theoretically informed map, Deleuze draws his own topology, and he is fully entitled to it. Speaking as a feminist I see this as confirming the

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<sup>78</sup> Teresa De Lauretis, *Technologies of Gender: Essays on Theory, Film and Fiction* (Bloomington: Indiana University Press, 1987). p24

<sup>79</sup> Braidotti, *Metamorphoses: Towards a Materialist Theory of Becoming*. p81

<sup>80</sup> Rosi Braidotti, *Patterns of Dissonance: A Study of Women in Contemporary Philosophy* (Cambridge: Polity, 1991). p138

<sup>81</sup> Ibid.

<sup>82</sup> Braidotti, *Metamorphoses: Towards a Materialist Theory of Becoming*. p83

importance of the 'politics of location' and of sexual difference as marking asymmetrical positions between the sexes. The positioning that comes from our embodied and historically located subjectivities also determines the sort of political map and conceptual diagrams that we are likely to draw'<sup>83</sup>

This focus on positionality and the particular topologies that are drawn depending upon these positions draws attention to the important double movement at play here: the figure of becoming-woman (as a virtual movement) is not a psycho-social type, but nor is it entirely independent from the actuality in which it is expressed. Actual and virtual operate co-extensively and reciprocally in a process of becoming in a constant movement of locating, breaking and repositioning boundaries and thresholds. This point is discussed further in Chapter Six, but of is key relevance here as it provides a means by which we might further clarify and explore the points of tension at play. It is important here to avoid reading Deleuze as arguing that the 'other' will be always nomadic or always an escape into an ungrounded smooth space of deterritorialisation or dissolution. This approach amounts to little more than a crude exoticisation of otherness, and although this is a critique that has been levelled at Deleuze and Guattari<sup>84</sup>, Braidotti suggests that this is a misreading that hinders serious conceptual criticisms that do need to be made.<sup>85</sup>

Thus in an attempt to return to questions of LGBT subjectivity, identity and withdrawal, I want to situate these problematics and points of tension in relation to questions of subjectivity. For Deleuze individuals are not subjects; instead haecceities – degrees of intensity – in combination with other haecceities, bring about individuals.<sup>86</sup> 'Haecceity is an understanding of identity as a hybrid collectivity that does not focus on the individual but on the connection of the individual with other bodies in the broader sense of the term. Haecceity is the assemblage between one's body, other bodies, the space in which one is moving, the body of law that determines one's movement.'<sup>87</sup> Therefore to think haecceities is to think not of stable individual subjects but of interconnecting intensities situated upon or within a plane, moving in space, affecting and being affected in their turn. Becoming is the process of the encounter of haecceities, the merging and contagion of singularities along borders that are located within a dynamic and moving field. Thus what operates here is not identity, but rather pre-individual singularities, intensities and

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<sup>83</sup> Ibid p167

<sup>84</sup> Shukin explores this critique in N Shukin, "Deleuze and Feminisms: Involuntary Regulators and Affective Inhibitors," in *Deleuze and Feminist Theory*, ed. Claire Colebrook and Ian Buchanan (Edinburgh: Edinburgh University Press, 2000).

<sup>85</sup> Braidotti, *Metamorphoses: Towards a Materialist Theory of Becoming*. p168

<sup>86</sup> Constantin V. Boundas, "Individuation," in *Deleuze Dictionary*, ed. Adrian Parr (Edinburgh: Edinburgh University Press, 2010). p133

<sup>87</sup> Andreas Philippopoulos-Mihalopoulos, "Mapping the Lawscape: Spatial Law and the Body," in *Beyond Text in Legal Education*, ed. M Del Mar Bankowski and P Maharg (Edinburgh: Edinburgh University Press, 2012).

flows that engage in moments of speed, slowness and rest. Haecceity demands that we do not isolate or remove individuals from their surroundings, but consider them instead as embodied, enmeshed and in a reciprocal interaction with their space and surroundings. Individuals as they emerge here must be viewed in terms of their connections and connectability.

With this understanding, we might refine Hemming's subject/subject relation yet further. If becoming and the encounter can be viewed as a meeting of haecceities, then this meeting must be understood and analysed as a material and situated occurrence. This is not a conceptual or transcendental rearrangement so much as an organisation and arrival on a plane of consistency in which the encounter marks a 'change of space and speed' in the 'experiential field' evoking new bodies and transformative becomings. Yet read in line with Braidotti's critique of becoming woman, this encounter, this mode of being/becoming-in-the-world cannot and should not be read as neutral (that is non-gendered, sexed, etc.). The entire movement here is profoundly spatialising and temporalising, at stake is not a relation of transcendental stable subjects, but material and actual encounters. This is not a prioritisation of the actual over the virtual, or vice versa, but a recognition of the activation of both in the process of becoming through simultaneous intensive differentiation and actual differentiation.<sup>88</sup>

Thus, put as succinctly as possible: we are all differently in the world and this profoundly affects our encounters. What this approach emphasises however is not simply the potential for a myriad of different subject positions, but the necessity for an 'enlarged sense of interconnection between self and others, including the non-human or 'earth' others, by removing the obstacle of self-centred individualism.'<sup>89</sup> This differentiated being suggests differential responsibilities and power dynamics. 'As Deleuze and Guattari argue: the centre has to deconstruct its powers and let them lie, while the margins are the motor of active processes of becoming.'<sup>90</sup> As such, dissymmetrical positions and subjectivities demand dissymmetrical actions. Yet these actions must be understood through the complexity of haecceity and encounter rather than identity or stable subjectivity. What constitutes a centre or a margin in a particular time and place is subject to change. Asymmetrical relations may persist, but the content of these relations can and does change. In exploring this point, Braidotti cites Massumi, suggesting that 'the boundaries of identity in advanced capitalism are shifting rapidly. So fast in fact, that any crystallization of specific identities, even by marginal groups is at best an oasis of relative stasis in the global capitalist time: a local reterritorialization, guarded frontiers in an

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<sup>88</sup> For Deleuze, differentiation happens only in the virtual: it is the divergence and division of intensities and heterogeneous qualities. Differentiation involves the actual movement of heterogeneous series – 'differentiation is an actualisation of the virtual' Adrian Parr "Differentiation/Differenciation" in *The Deleuze Dictionary: Revised Edition*, ed. Adrian Parr (Edinburgh: Edinburgh University Press, 2010). p78

<sup>89</sup> Rosi Braidotti, "Affirming the Affirmative: On Nomadic Affectivity," *Rhizomes* 11/12 (2005).

<sup>90</sup> Braidotti, "A Critical Cartography of Feminist Post-Postmodernism."



uncertain landscape.’<sup>91</sup> Sedimentations of identity remain one step behind what is actually happening and furthermore, these sedimentations can actually block processes of becoming. If we understand the coagulation of identities in relation to processes of naming, we can extend this line of reasoning, as for Deleuze, language exists as a dominant and prescriptive order rather than a communicative process.<sup>92</sup> Thus, even if we pay close attention to our emplacement and use this as the basis for responsible action, we are still subject to a language that is the ‘centre that invents the margins’<sup>93</sup> The centre, and the language at the centre, plays a profoundly spatialising role, our position in relation to this centre dictates what is possible. Becoming, we might argue, occurs when we attempt to transcode this margin/centre dynamic into a (rhizo)morphous rather than arborescent structure – when we look for multiple centres and multiple margins and engage with the problematics that this brings into play. Our aim Massumi suggests, must be to complicate this process of identity and identification – and in doing so, to inject movement into politics.<sup>94</sup>

It is perhaps at this point that we can attempt to ‘re-problematise’ the position of the activist political actor as haecceity or as body in space. I want to suggest that there has been a recent movement in relation to sexuality in various different arenas both global and local. An overt form of this movement can be found in the recognition in law of sexual rights and thus the movement from margin to centre of ‘sexual subjects’ as they are currently understood. Again however, this process of naming captures only part of the movement taking place.<sup>95</sup> Complete incorporation into a social machine for these sexual others remains deferred, identity is always not quite captured and named identities remain limited and restrictive in relation to a flow of becoming or a line of flight.

This is why we need to extend beyond bodily identities to haecceity, movement and intensity. Singularities moving at speed and affecting each other in space and time, folding and refolding themselves upon a plane of consistency, must complement our understandings of subjectivity and subjectification: the bodies, identities and subjects which populate our political and legal processes are intersected by pre-individual singularities, objects and perceptions. I have already emphasised the spatialised nature of this process, but to return to Braidotti’s critique once again, this spatiality also highlights the significance of positionality and location. To move from identity bearing subjects to haecceities encountering each other on a plane of consistency does not necessarily neutralise asymmetries or power dynamics; instead, it may actually

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<sup>91</sup> Massumi in Braidotti, *Metamorphoses: Towards a Materialist Theory of Becoming*. p168

<sup>92</sup> Gilles Deleuze, *Desert Islands and Other Texts 1953-1974* (Semiotext(e), 2004). p286

<sup>93</sup> Ibid.

<sup>94</sup> Cited in Braidotti, *Metamorphoses: Towards a Materialist Theory of Becoming*. p169

<sup>95</sup> Ibid. p169

complicate them. In this way we can situate Tatchell's compulsion to speak and Tauqir's demand for silence not just as individual decisions but also as interactions with flows of affect, bodies and power within particular spaces, producing different effects in different locations. As such, flows and encounters change and contest conditions for action, rendering previous schemas of thought, action and identity problematic. Boundaries become thresholds for qualitative change, resulting in new assemblages that cannot be easily be integrated into an established pattern of meaning.

These problematic changes and encounters recall Spivak's 'line of the unspeakable' or the feeling of horror at the encounter with that which cannot be incorporated.<sup>96</sup> I would suggest that we might understand this line as an encounter in a Deleuzian sense – as the moment which makes us pause and stutter, the moment of openness to both alterity and virtuality.<sup>97</sup> It is this point of challenge that is significant. For example, in terms of the executions of the three young men in Iran – the topic with which I have been obliquely engaging throughout this chapter, we might argue that the executions are horrific on their own terms. We do not need to overcode the boys' deaths with the language of LGBT suffering to drive home the suffering of the individuals involved and in moving too quickly to institute this overcoding, we perhaps do the boys a disservice. In the final instance then, we can unpick and understand what happened in terms of activist discourse, but to assimilate what happened to the cause of LGBT politics is to act too hastily in the face of the complexities of different affects and forces that are in circulation. The responsibility here was not to not act, but to allow for a space of withdrawal before taking action and to engage with the specifics of the affects, bodies and intensities at play rather than turning immediately to a narrative of identities and injustices. This is easy to write from the point of academic remove, but much more difficult to do in practice. In this instance however, faced with the complexities of the issues at hand, Deleuze and Guattari's admonishment to withdraw in a revolutionary way seems to resonate.

In attempting to address this issue, Hawley suggests that:

'If we are to expand Gayatri Spivak's question and ask whether the *gay and lesbian* subaltern can speak, perhaps the best path to a level playing field for investigation would be a postcolonialism that humbly stays a bit out of kilter, a bit queer, and for Westerners a bit less garrulous'<sup>98</sup>

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<sup>96</sup> Cited in Hemmings, *Why Stories Matter: The Political Grammar of Feminist Theory*. p217

<sup>97</sup> Simon O'Sullivan, *Art Encounters Deleuze and Guattari: Thought Beyond Representation* (Basingstoke: Palgrave Macmillan, 2006). p69-97

<sup>98</sup> John C. Hawley, ed. *Postcolonial Queer: Theoretical Intersections* (Albany: State University of New York, 2001). p5

I have already commented upon the way in which this may be more difficult than this quote suggests: that individuals can become consumed or subsumed by the discourses of LGBT rights that they come to represent, and as such the ability to speak becomes an imperative to do so. This formulation is yet another twist on the dual sidedness of identity based rights – just as rights can go from being empowering to being prescriptive, the identities and the individuals who embodied these identities in order to make rights demands may find themselves bound to, rather than liberated by a particular mode of recognition and identity.

However, even when not speaking at all is an impossibility, withdrawal to the extent that one is more aware of the power dynamics of identity at play is not. To fail to do this is to remain trapped within restrictive binary structures of identity politics. In essence, to resist these restrictive binaries, we must attempt as far as possible, to withdraw, pause before we speak and most importantly to decentre the power structures with which we are faced – especially if we ourselves are implicated within those structures – and as such, to engage in an act of disruptive speech. We must find the ‘vacuoles of non-communication’<sup>99</sup>, or circuit breakers and switches through which we can attempt to elude these controls and compunctions.

This is a complex process, particularly given that we are dealing with issues of rights and law – a system that is decidedly logocentric. However, I would suggest that this logocentricity if anything, makes the identification of ‘the unutterable’<sup>100</sup> even more significant. What is at stake here is not just the act of not speaking or silence as an absence of language but instead the silence of the unutterable, the non-logos of law and the limits of the language to which our LGBT constructs are inevitably subject. The unutterable, or these vacuoles of non-communication, are then not just unspoken words or even words that we do not yet know how to speak, they are instead the presence in the system of ignorance, incomprehensibility and uncertainty<sup>101</sup>, the other-than-language and the possibility of communication without words. As such these moments function as a bringing into legibility of the logocentric system: to ‘bring what’s been established back into question.’<sup>102</sup> This is perhaps what Cigarini envisages in calling for ‘legislative voids’. Hanafin notes that for Cigarini, this creates a space ‘above the law’ that ‘interrupts the...legal symbolic.’<sup>103</sup> At issue here is the space of the unregulated, smooth space of nomadic distribution, unmediated by identity (-politics). It is potentially a pause in which we might bring into illumination those circumstances which are unstratified by speech and identity

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<sup>99</sup> Deleuze, *Negotiations*. P175 Jussi Vahamaki and Akseli Virtanen, "Deleuze, Change, History," in *Deleuze and the Social*, ed. Martin Fuglsang and Bent Meier Sorenson (Edinburgh: Edinburgh University Press, 2006). p223

<sup>100</sup> Andreas Philippopoulos-Mihalopoulos, "The Vociferous Rupture: Silence, Law and Ignorance," *Organdi revue*, 7 (2005).

<sup>101</sup> Ibid.

<sup>102</sup> Deleuze, *Negotiations*. p153

<sup>103</sup> Patrick Hanafin, "Refusing Disembodiment: Abortion and the Paradox of Reproductive Rights in Contemporary Italy," *Feminist Theory* 10, no. 2 (2009). p239

– the body without organs or the emplaced haecceity. At stake is the chance to contemplate unstructured becoming and transversal connectivities.

This contemplation cannot be uniform: it is instead engaged differently depending upon one's location, which is why a focus on the differential responsibilities of margin(s) and centre(s) is so important. Nor is such contemplation necessarily comfortable, particularly for those who are used to action, unitary subjectivity or privilege. As Douglas suggests however, some discomfort may be necessary in the pursuit of political change – 'good feeling' should not be the primary goal of the activist:<sup>104</sup> it is instead important to question those institutions which maintain and legitimate the unitary stability on which our comfort and the cohesion of both disciplinary fields and social imaginaries rely.<sup>105</sup> Most importantly, such speaking comes from an emplaced and immanent knowledge of the self. The complexities of this emplacement are discussed in the following two chapters.

Thus, one response to the encounter might be to accept the moment of disorientation that makes us pause, to stutter into silence, to engage in a productive withdrawal. The privilege at play here means that this pause need not be permanent, but can act as a mode of knowing (in)action. In seeking to refrain from rushing to overcode the issue at hand with the linguistic tools already available to us, we might also begin to depersonalise or situate the issues with which we are faced. Instead of resorting to our already coded rights or identities, we might withdraw enough to allow for the emergence of what Andreas Philippopoulos-Mihalopoulos calls a space of '*a different, second legality: the lawless legality of justice.*'<sup>106</sup>

In the introduction to this chapter, I suggest that rights are abstract machines that both build up and break down our social stratifications. We might argue that a focus or investment in only the first part of this dynamic impacts upon the form which social struggle and resistance is able to take. Of equal significance is the moment of breakdown and the time of withdrawal. This is, the point at which we pause, stutter and engage creatively with what we thought we already knew. This is not an easy movement, nor is it a guarantee of positive change. However, I would argue that this creative re-engagement is necessary if we are to move beyond some of the problematic binaries and representations that have been the focus of this chapter. In the following chapter, I will discuss how we might theorise these moments of breakdown and withdrawal.

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<sup>104</sup> Douglas, "On Defending Raw Nerve Books: Or, the Stuff of Good Feeling."

<sup>105</sup> David L. Eng, Judith Halberstam, and Esteban Munoz, "What's Queer About Queer Studies Now," *Social Text* 84-85 23, no. 3-4 (2005).

<sup>106</sup> Andreas Philippopoulos-Mihalopoulos, "Law, Space, Bodies: The Emergence of Spatial Justice," in *Deleuze and Law*, ed. Laurent de Sutter and Kyle McGee (Edinburgh: Edinburgh University Press, 2012).

## **Chapter Five - The politics of paradoxical rights and multiple histories in LGBT activism and in the South African Constitution**

### **The (false) problem of representation and negativity in sexuality rights politics**

I have suggested that a key issue with which gay rights activism must engage is the question of misrepresentation in relation to political activism, particularly with regard to what the practical and organisational consequences of such misrepresentation might be. However, this issue also has a significant theoretical dimension which relates directly to the methodological problem of the way in which we frame and address questions of sexuality and rights. In Deleuze we find an overarching critique of 'representation' and the perils of 'doxa' in approaching problems and questions. This critique suggests that a theoretical engagement with the issues raised in the previous chapter might involve an analysis of the perils of those illusions that bind us to false problems or representations and facilitate the grasping of a problem in such a way as to be trapped by false structures that make a solution an impossibility. As Olkowski suggests:

‘This is the dark thought I have had about representation for so long: we are immersed in it and it has become inseparable from our condition. It has created a world, a cosmos even, of false problems such that we have lost our true freedom: that of invention.’<sup>1</sup>

The framing of the problem limits it to the extent that we become unable to find creative solutions – we remain trapped in unhelpful binaries, or tied to particular identity categories that hold particular ethical demands for action. These representational images can encompass not only a practical but also an affective dimension, as we invest in particular images and in doing so, create relations of desire and affect between images and bodies. Such investments produce not only relations between self and image, but also relations between and within collective bodies.<sup>2</sup> Singular and collective investment in an image reinforces and reiterates particular flows and connections, based within or upon the image.

My interest here is in the way in which this operation of representation colours the operation of rights and sexuality. More specifically, at issue here is the functioning of a particular political and legal system within a particular context in order to close down the circulation of difference in relation to identity. The definition of sexuality and rights according to particular categories and cartographies works to situate them as stable blocks in relation to each other and within the framework of an always already existing structure. Thus, we can argue that identities, behaviours and actions can exist most easily when subsumed into a particular image of law. It is through recognition in an already existing frame that political ends can be stated. As this frame

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<sup>1</sup> Dorothea Olkowski, *Gilles Deleuze and the Ruin of Representation* (Berkeley: University of California Press, 1999). p91

<sup>2</sup> Claire Colebrook, *Deleuze: A Guide for the Perplexed* (London: Continuum, 2006). p55-56

is essentially subsumptive, resting on binaries of identificatory classification – either/other, self/other, within/without - it is perhaps of little surprise that this kind of gay rights politics has a strong tendency towards the operation of exclusionary disjunctions in which we are expected to line up behind particular, exclusive and excluding signifiers, to adhere to particular pre-conceived representations and to view self and other through simple binaries of identity, based on singular characteristics of sexuality. Indeed in *Anti-Oedipus*, Deleuze and Guattari warn of the dangers of such exclusive disjunctions and while they do not dismiss the need for a molar politics of identity (particularly in relation to women's rights) they do warn that 'no "gay liberation movement" is possible as long as homosexuality is caught up in a relation of exclusive disjunction with heterosexuality, a relation that ascribes them both to a common Oedipal and castrating stock, charged with ensuring only their differentiation in two non communicating series.'<sup>3</sup>

I am suggesting then, that the dominant frame at play within the field of rights is one in which humanity has been produced as 'relatively stable moving wholes.'<sup>4</sup> These wholes are identifiable and nameable – they are a form of organisation against the multiplicity of virtuality and contribute to the production of what we recognise as the 'human' of human rights. However, problematic encounters – particularly those that demand that we think outside a dualism of identity and its negation - throw into sharp relief the limits of such framings. Here, the question of humanity is not only reduced to stable dualities, but further grounded upon a singular and reductive image of man. Most significantly, Man – that is man as white, male, rational, heterosexual etc. – becomes 'the privileged referent of subjectivity, the standard-bearer of the norm/law/logos.'<sup>5</sup> Man is the majority, 'the dead heart of the system'<sup>6</sup> the 'molar entity par excellence.'<sup>7</sup> Or, as Colebrook notes, 'man' has become the foundation (or image) of all reason, thought, representation and action, and as such the flow of life's images has become centred upon this single image.<sup>8</sup> We exist in a hierarchical relationship with one particular privileged image of humanity as man. Of key significance here is the way in which the operation of rights often reflects this sole, privileged flow of images. The image of man has become a habit that restricts us but has also become essential to the functioning of our institutions. We operate under a particular regime of the truth of the subject and our laws and politics unfold from this singular position. Braidotti calls this singularity of focus 'the philosophy of priests, judges,

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<sup>3</sup> Gilles Deleuze and Félix Guattari, *Anti-Oedipus*, trans. Robert Hurley, Mark Seem, and Helen R. Lane (London: Continuum, 2011). p384

<sup>4</sup> Colebrook, *Deleuze: A Guide for the Perplexed*. p13

<sup>5</sup> Rosi Braidotti, *Metamorphoses: Towards a Materialist Theory of Becoming* (Cambridge: Polity Press, 2008).p78-9

<sup>6</sup> Ibid.

<sup>7</sup> Gilles Deleuze and Félix Guattari, *A Thousand Plateaus*, trans. B Massumi (London: Continuum, 2004).p322

<sup>8</sup> Colebrook, *Deleuze: A Guide for the Perplexed*. p141

censors, confessors and pornographers' all relying on 'negative, resentful, disavowed affects.'<sup>9</sup> Such a position creates artificial clarity and ignores or denies multiple connections along horizontal rather than hierarchical (arborescent) axes. In essence, man becomes the centre and a hierarchy is determined on our distance from this image of man – or our distance from an assumed normality. In terms of rights then, we exist in a system of hierarchies within hierarchies. 'Man' forms the centre, the subject, truth and foundation of being. Man is also the subject of legal systems; rights emerge through a history of 'his' needs and struggles. This system of legality both hides and naturalises its own power and ultimately feeds back to us a truth both of Man, rights and the system that sustains them as images. However, I would suggest that a nuanced approach to sexual rights politics can work to form part of a flow that exposes such images as false foundations, as limited and as dependent upon our own investment in truth, foundation, hierarchy and arborescence. Rights act as one striation or cartography, based on particular images of Man and society, they are not the only striation that could exist.

### **Refiguring false problems of sexual orientation rights as Deleuzian paradox and encounter**

The positioning of one particular foundation or image of rationality/logos lays the ground for a politics that proceeds through contradiction, opposition and negations in which identities are defined through othering rather than connectivity/conatus. For Deleuze however, such a frame is unsatisfactory: he suggests that '[t]he combination of opposites forms a net so slack that everything slips through.'<sup>10</sup> Our starting point should not be from identity and its negation, but from the play and connection of difference, the virtual and the actual. Contradictions, he suggests, reflect only the shadow of the problem, the incorrectly grasped problem through which we will fail to find a solution. The aim is to refigure the problem as the play of difference, as the question beyond representation in order to grasp not the correct solution, but the solution outside the limited play of closed and negative binary oppositions: the re-actualisation of the virtual; or the frame not of identity and negation but being and ?being.<sup>11</sup>

My particular focus is the use of rights in relation to this process of re-actualisation. I have already noted the way in which Deleuze is highly critical of what we might call rights in their abstract or universal form: rights which subsume singularities under a particular dogmatic image of law, or rights which force an illegitimate use of the disjunctive synthesis and compel us to line up behind particular identities and signifiers. There are numerous examples of rights

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<sup>9</sup> Braidotti, *Metamorphoses: Towards a Materialist Theory of Becoming*. p72

<sup>10</sup> Gilles Deleuze, *Bergsonism*, trans. Hugh Tomlinson and Barbara Habberjam (New York: Zone Books, 2006). p44-45

<sup>11</sup> Gilles Deleuze, *Difference and Repetition*, trans. P Patton (London: Continuum, 2011). p254

operating in this way – as D'Souza argues, the way in which rights are generally implemented is, if not overtly oppositional or negatively dialectical, then at least mired in contradiction: it is a system which sets groups against each other in an endless process of contestation and opposition. Rights engender an 'epistemological economism' which erodes the intrinsic worth of the self, positing an abstract Human of human rights against the empirical human who is valued only according to economic worth.<sup>12</sup> Rights become a zero sum game of competition and exclusion with no room for the play of differences or the mutation of identity. The problems of this approach are highlighted in previous chapters.

However, I want to suggest that there is a paradoxical element at play here. There is no doubt that rights structure the frame through which we make claims. Rights have, in some contexts, become a habit: a shorthand for articulating desire or injustice. However, to analyse this aspect of rights – to read rights only in their 'transcendental' mode, is to miss a second mode in which rights operate: this might be termed the 'immanent' operation of rights. In this sense, we can articulate the way in which rights act as a kind of abstract machine, or a key that both organises and disorganises our claims to justice. Guattari writes that 'machines connect flows'<sup>13</sup> and by thinking of rights as facilitators of connection, we might view them as tools that both chart particular paths and striate the social world that we inhabit and at the same time, act as agents of disruption of these same pathways. Rights code and articulate the way in which we approach justice, but under or alongside this coding, there remains a virtual element to justice, an element that is unactualised, or a surplus that rights may attempt to re-capture and re-articulate but fail to adequately express. This failure marks a moment of deterritorialisation, a moment of disruption to the code. Rights are simultaneously encased within, organising forces of, and disruptive elements moving about particular planes of consistency.<sup>14</sup> Patton suggests that societies are in a constant process of breaking down and building up,<sup>15</sup> in this instance, I would suggest that rights in their immanent mode form a key part of this movement.

This means however, that rights themselves remain paradoxical in a number of different ways. On the level of the actual, the deployment of rights can lead to impasse or to rights language being used to hold and support two entirely contradictory positions.<sup>16</sup> Furthermore, on the level of the interplay of actual and virtual, rights perform a number of different functions at the same time: they are captured, agents of capture and agents of escape depending upon the

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<sup>12</sup> Radha D'Souza, "The Rights Conundrum: The Poverty of Philosophy Amidst Poverty," in *Rights in Context: Law and Justice in Late Modern Society* (Ashgate, 2010). p10-11

<sup>13</sup> Cited in Mark Halsey, "Deleuze and *Deliverance*: Body, Wildness, Ethics," in *Deleuze/Guattari and Ecology*, ed. B Herzogenrath (London: Palgrave Macmillan, 2008). p233

<sup>14</sup> Deleuze and Guattari, *A Thousand Plateaus*. p159

<sup>15</sup> Paul Patton, *Deleuze and the Political* (Oxon: Routledge, 2000). p107-8

<sup>16</sup> Deleuze, *Bergsonism*. p45. Deleuze, Gilles, *On Human Rights* L'Abécédaire de Gilles Deleuze, avec Claire Parnet, Vidéo Éd. Montparnasse, 1996 at [www.generation-online.org/p/fpdeleuze10.htm](http://www.generation-online.org/p/fpdeleuze10.htm) accessed 12/12/2011



incarnation through which one approaches them. Rights cannot easily be categorised as one particular thing, and in this way, they express paradox.

What this approach brings to light is the way in which rights forge connections – between identities, between groupings, between legality and belonging and on a more abstract level, between the different categories we use to characterise relevant and irrelevant forms of identification and belongings in our societies. This is not to say that rights themselves are always the cause of such connections, but an examination of how such flows and connectivities work can highlight, for example, the growing relationship between sexual identity as a stable form, sexual behaviour and subjectivity within certain societies. As such, the key issue under consideration is perhaps not a clear definition of what rights are, nor even a secure foundation upon which we can posit a clear basis for the legitimacy of human rights language, but is instead the wider question of what rights are capable of doing when pushed to their limits. Our line of questioning should therefore concern what connections rights are able to make, what pathways they chart and which mappings they upset or disrupt. Deleuze suggests that ‘all our false problems derive from the fact that we do not know how to go beyond experience toward the conditions of experience, toward the articulations of the real and rediscover what differs in kind in the composites that are given to us and on which we live.’<sup>17</sup> In this context, I read this not solely as a question of the substance of this or that rights demand, but the meaning or essence of rights that are able to work in a particular way at a particular time to make particular connections and catalyse a particular connectivity. The question is not one of the foundation or legitimacy of a rights demand, but what it means that a rights demand has been made in a specific way at a specific time – what makes possible the set of connections or disconnections that rights are speaking to in each singularity or singular instance.

This I would argue, is the moment of paradox. However, for Deleuze, paradox need not be an impasse:

‘The force of paradox is not that they are contradictory; rather they allow us to be present at the genesis of the contradiction. The principle of contradiction is applicable to the real and the possible, but not to the impossible from which it derives, that is, to paradoxes or rather to what paradoxes represent. They always have the characteristic of going in both directions at once and of rendering identification impossible as they emphasize sometimes the first, sometimes the second of these effects.’<sup>18</sup>

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<sup>17</sup> Ibid. p26

<sup>18</sup> Gilles Deleuze, *The Logic of Sense*, ed. Constantin V. Boundas, trans. M. Lester and C. Stivale (London: Continuum, 2004). p86-7

Paradoxes allow us to go in both directions at once; their value is in their openness to heterogeneous positionings and engagements. They can mark the ethical moment, the moment of movement beyond teleology or trajectory. What is present is not inertia, but new becomings and new movements. Here, there is potential for new entanglements and resonances, new creations of multiplicities and assemblages, new mappings on the plane of immanence. Flieger suggests that the disjunctive synthesis is the 'greatest paradox.' Disjunction (in its legitimate form) and paradox suggest the linkage of infinite, maintained difference, 'a conjunction that does not imply genealogy but alliance.'<sup>19</sup>

Furthermore, I would suggest that the moment of paradox is also the moment when rights fail; that is, the moment when rights cannot easily speak to a situation, but attempt to do so anyway. Rights, which now act as our language to address wrongs, express paradox when they have no words or combinations to articulate our sense of deeply felt injustice. My argument here is that in expressing injustice as a rights demand, we make a selection, and in doing so draw upon particular connections, particular conditions and particular identities. Paradox marks our attempt to engage these selections occurring at the same moment as the emergence of the need for new connections, flows or striations. Lefebvre makes this point more generally in relation to law and judgment:

'What is the most basic activity of any judge or lawyer? Is it not to select a few relevant points of a case and coordinate these into arguments and judgments? Any case has an infinity of points and sides that go neglected, facts irrelevant to the interest at hand that exceed its eventual legal construction...The perception of a case - that is, its representation as a legal case - is limiting and subtractive; *only certain crucial points* are advanced and constructed into legal argument, but underlying these points is the case in itself, unperceived, or given to perception that part that interests the perceiving parties.'<sup>20</sup>

Deleuze makes a similar point in relation to smoking in taxis in France – through different selections of what is or isn't relevant to a case, the judge constructs the law in a particular way. In its first incarnation or assemblage, the passenger in the taxi is a tenant and subject of rights of use and support while travelling in the taxi and thus permitted to smoke, but in a second folding of the assemblage, the taxi becomes a public service, the individual in the taxi the user of a public service, and thus subject to laws forbidding smoking in public buildings.<sup>21</sup> There are two related points at work here: the first relates simply to the process of the selection of what is

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<sup>19</sup>Jerry Aline Flieger, "Becoming-Woman: Deleuze, Schreber and Molecular Identification," in *Deleuze and Feminist Theory*, ed. Claire Colebrook and Ian Buchanan (Edinburgh: Edinburgh University Press, 2000). p56

<sup>20</sup> Alexandre Lefebvre, *The Image of Law: Deleuze, Bergson, Spinoza* (Stanford: Stanford University Press 2008). p123

<sup>21</sup> Gilles Deleuze, "On Human Rights" at <http://www.generation-online.org/p/fpdeleuze10.htm> accessed 19/01/2012

relevant in relation to rights, but the second is the issue of when this process of selection becomes necessary – when our pre-selected rights language, or our pre-identified images of thought, law and identity are unable to adequately capture (actualise) the demands of a particular case. I would suggest that this is the moment of openness to the event, to the actualisation of the virtual and to the selection of the new. We could argue, with Mussawir, that at issue here is the question of the expression rather than the representation of law.<sup>22</sup> This does not mean that every failure of rights heralds an event in the Deleuzian sense – events are not something that we can necessarily anticipate, but are rather something that we must become worthy of. However, the stuttering of rights can form an encounter: a moment which forces us to think rather than to act according to pre-ordained habits. This stuttering is the moment in which we might potentially see the actualisation of the virtual in response to the demands of the actual, or the moment when the image of thought is disrupted or destabilised. Thus, the encounter, or moment of disruption might act as the actual side of the two-sided event. The event is discussed in Chapter Two, however it bears repeating here that for Deleuze, the event is the virtual transformative effect, existing on the plane of immanence, and through the event's actualisation we experience a transformation. An event is always transcendental, immanent and expressed as a verb. 'It can never come about but produces and conditions that which does come about.'<sup>23</sup> Events are the product of the synthesis of forces and signify the dynamic of their interactions.<sup>24</sup> This means that an event is not a happening itself but the potential immanent within a confluence of forces. 'The event is not a disruption of some continuous state, but rather the state is constituted by events "underlying" it, in that when actualised, they mark every moment of the state as a transformation.'<sup>25</sup> What is key is the way in which the event is not necessarily best thought of as a new beginning. Instead Williams suggests that '[a]s an event, a beginning must be understood as a novel selection in an ongoing and continually altering series.'<sup>26</sup> As such, 'an event is a release of connections.'<sup>27</sup> Here then, I am not suggesting a simple causal relation between encounter and new conditions, but a relation between the two series of actual and virtual that is mediated by the event. The actual (encounter) determines new relations among virtual conditions, which are then actualised through the event.<sup>28</sup>

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<sup>22</sup> Edward Mussawir, *Jurisdiction in Deleuze: The expression and representation of law*. (Abingdon: Routledge, 2011). p10

<sup>23</sup> Jack Reynolds, "Wounds and Scars: Deleuze on the Time of the Event," *Deleuze Studies* 1, no. 2 (2007).

<sup>24</sup> Cliff Stagoll, "Event," in *The Deleuze Dictionary: Revised Edition*, ed. Adrian Parr (Edinburgh: Edinburgh University Press, 2010). p90-91

<sup>25</sup> Ibid.

<sup>26</sup> James Williams, *Gilles Deleuze's Logic of Sense: A Critical Introduction and Guide* (Edinburgh: Edinburgh University Press, 2008). p2

<sup>27</sup> Ibid. p141

<sup>28</sup> Rodrigo Nunes, "Politics in the Middle: For a Political Interpretation of Dualisms in Deleuze and Guattari," *Deleuze Studies* 4, no. Supplementary Issue: Deleuze and Political Activism (2010). p119

## Fracturing identities and rights: The three syntheses of time and the eternal return

In addressing the event, Deleuze revisits and rewrites Kant's three syntheses focusing in particular on the way in which time, as that which is outside the domain of representation, escaped Kant's grasp.<sup>29</sup> Drawing on Hume and Bergson, Deleuze offers an alternative, non-representational, synthesis of time. Very briefly, Deleuze's first synthesis of time is passive – that of contraction of elements and the formation and foundation of habit memory. Following Hume, we contract our impressions, bringing the external internal. This means that we are formed of contractions, associations and habits. Ideas are derived from impressions, which 'return upon the soul' and are connected to other impressions that they resemble. Thus the faculties of the mind are impressions of reflection and conjugations – or the formation of habit. The 'self' can be traced to the enfolding and repetition of several impressions. This passive synthesis/contraction is the past synthesised in present behaviour, looking towards the future. As such, it gives time a forward direction and is what makes expectation possible.<sup>30</sup>

For Deleuze, this passive habit memory forms the foundation and basis of time by constituting time as present: for expectation in the present, we must presuppose a passive synthesis. It is memory however, which makes the present pass. 'Contraction or passive synthesis constitutes time as a living present whose dimensions are the past and future...This means that the past does not function as the old present – custom or habit are the present and never cease to be the present – yet at every present, past images mingle with the present, completing and enriching present experience.'<sup>31</sup> Thus the second and active synthesis, or active recollection of time takes place in the active recollection of the old present occurring simultaneously with the contraction of the actual present.<sup>32</sup> Here, for Deleuze (following Bergson) the past exists as virtual and is actualised by perception. Memory is a 'virtual object' that is actualised or differentiated<sup>33</sup> according to present perception.<sup>34</sup> Each plane of memory then, is contracted according to the present perception. Thus the relationship between the two syntheses can be understood as interacting:

'Habit is the foundation of time, the moving soil occupied by the passing present. The claim of the present is precisely that it passes. However, it is what causes the present to pass, that to which the present and habit belong, which must be considered the ground of time. It is

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<sup>29</sup> Keith W. Faulkner, *Deleuze and the Three Synthesis of Time* (New York: Peter Lang Publishing, 2006). p3

<sup>30</sup> James Williams, *Gilles Deleuze's Difference and Repetition: A Critical Introduction and Guide* (Edinburgh: Edinburgh University Press, 2003). p87

<sup>31</sup> Olkowski, *Gilles Deleuze and the Ruin of Representation*. p110

<sup>32</sup> Ibid.

<sup>33</sup> Adrian Parr "Differentiation/Differenciation" in *The Deleuze Dictionary: Revised Edition*, ed. Adrian Parr (Edinburgh: Edinburgh University Press, 2010). p78

<sup>34</sup> This is Bergson's cone of memory. See Alia Al-Saji, "The Memory of Another Past: Bergson, Deleuze and a New Theory of Time," *Continental Philosophy Review* 37 (2004). p211

memory that grounds time. We have seen how memory, as a derived active synthesis, depended upon habit: in effect, everything depends upon foundation...The passive synthesis of habit in return refers to this more profound passive synthesis of memory: *Habitus* and *Mnemonsyne*, the alliance of the sky and ground.<sup>35</sup>

However, at this point, Deleuze argues the second synthesis of time points to a third synthesis by which we can think temporality. In the second synthesis, we see Bergson's 'virtual memory' – the cone-shaped diagram that visualises the way in which memory is a multi-layered whole, in which different 'planes' are contracted at different levels, dependent upon the way in which memory is actualised. Deleuze wishes to push beyond this, to enter the whole of time and duration, without memory or present perception. 'He wishes to live the being in itself of the past, to enter the in-itself of memory without realizing it in the present for action.'<sup>36</sup> This is a second passive synthesis – the time of memory – the extracting of a past that has never been lived. For Deleuze, this is Proust's *Combray*.<sup>37</sup>

To achieve this, Deleuze returns to Kant's critique of Descartes' *Cogito*. Descartes 'I think therefore I am' implies a determination (I think) which itself implies an undetermined existence (I am): the undetermined is determined as the existence of a thinking subject. Kant argues that it is impossible for determination to bear directly on the undetermined.<sup>38</sup> The determined implies the undetermined, but nothing tells us how the undetermined is determinable by the 'I think'. Thus Kant adds a third value – that of the determinable or the form in which the undetermined is determinable by the determination. For Deleuze '[t]his third value suffices to make logic a transcendental instance'<sup>39</sup> it represents the discovery of transcendental inner difference, in which the 'I think' and the 'I am' – thought and being - are a priori related to each other.

This is why Deleuze refers to the subject as the 'cracked I'.<sup>40</sup> The receptive ego (undetermined existence) can only be determined in time as a passive ego which is constantly changing and the 'I' is an act that carries out the synthesis of time and of what takes place in time. The 'I think', is not an attribute of a 'substantial and spontaneous' being, but the 'affection' of the passive self experiencing its own thought exercised upon it and in it but not by it. This is the paradox of inner sense: the I and the ego are split, the I is an 'Other' lived like an Other 'within the subject', it is the force of internal difference that emerges in the present and divides all time into past and

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<sup>35</sup> Deleuze, *Difference and Repetition*. p101

<sup>36</sup> Olkowski, *Gilles Deleuze and the Ruin of Representation*.p135

<sup>37</sup> Deleuze, *Difference and Repetition*. p107

<sup>38</sup> Ibid. p108

<sup>39</sup> Ibid. p108

<sup>40</sup> Olkowski, *Gilles Deleuze and the Ruin of Representation*. p138

future at each instant. Time then, signifies the inner difference between ego and I or the passive and active selves:

‘It is thought the *I* were fractured from one end to the other: fractured by the pure and empty form of time. In this form it is the correlate of the passive self which appears in time. Time signifies a fault or fracture in the I and a passivity in the self and the correlation between passive self and the fractured I constitutes the discovery of the transcendental, the element of the Copernican Revolution.’<sup>41</sup>

In this third articulation, time is pure or empty, distinct from empirical time. Empty time is internal and independent of actual objects. The future and past here are not dynamic empirical determinations of time but formal and fixed characteristics distributed on either side of the crack or ‘caesura’. Time is divided into two series in relation to the caesura – ‘there are forms that cannot return and that are consigned to remain past forever and there are forms that return with the cut that are relived with it.’<sup>42</sup> *Where* or *when* something occurs in relation to linear time is not at issue here so much as its distribution according to the cut.

From here, Deleuze questions what images call up the a priori/formal past without memory. His answer is the event that seems too big, or the untimely. The examples drawn upon most often here are that of Hamlet and Oedipus, both of whom back away from the tasks pressed upon or predicted for them – the side of the caesura in which the symbolic image that constitutes an image of action that is too great, too unbeatable.<sup>43</sup> Here, it is of little consequence whether the event has actually happened or not (as this is an empirical understanding of time, rather than the pure/formal criteria to which Deleuze is now working) what matters is the response to image of action out of the a priori past – it is held as too great.

However, the second experience or repetition of time is the repetition of the past *in* the caesura. It is the drawing of action from memory and its contemplation in a way that facilitates the becoming-capable and becoming-equal to action. ‘If the whole of memory can be contracted into an image for action and into the interval between receptivity and responsiveness, then we have arrived at the present as it moves to the future, the interval that is the capability for action, the “becoming” capable, which is only an instant.’<sup>44</sup> Thus there is a doubling of the self and a ‘projection on an ideal self into the image of the act.’<sup>45</sup> In this becoming capable there is the third synthesis, the future is ‘discovered’, the I is cracked and time surges forth between the ego

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<sup>41</sup> Deleuze, *Difference and Repetition*. p108-9

<sup>42</sup> Williams, *Gilles Deleuze's Difference and Repetition: A Critical Introduction and Guide*. p103

<sup>43</sup> Deleuze, *Difference and Repetition*. p111-2

<sup>44</sup> Olkowski, *Gilles Deleuze and the Ruin of Representation*. p140

<sup>45</sup> Deleuze, *Difference and Repetition*. p112

and I. This is the third experience of time – the repetition of the future. As it occurs, event and act (virtual memory and present perception) conspire and the self is swept away – the surging forth of time does not give birth to identity, but to dispersion and multiplicity. This becoming equal and contraction and repetition of the whole of ontological memory heralds a surging forth of the new and a shattering of identity. The present moves to the future.

This is why Deleuze finds Nietzsche's concept of eternal return so important. What returns is not identities, but singularities or elements, which repeat in all different possible combinations. Repetition exceeds the virtual past it repeats and the present in which it emerges, producing the future as a new combination. Here, Deleuze and Guattari's notion of 'becoming' is vital.<sup>46</sup> Seen in the context of the three syntheses of time and the eternal return, becoming involves the extraction, contemplation and repetition of these singularities in new modalities and combinations, new lines of flight. The third synthesis expels the restrictive, identitarian forms of the past and the present in favour of the new, the imperceptible and the becoming. As such, referring to 'becoming-woman', Burchill argues:

'Put as succinctly as possible, becoming-woman as a mode of repetition constitutive of the future is distinguished from the repetition or reproduction of feminine gender traits, in that, instead of contenting itself with including difference as a variant with (an enlarged field of) the Same, it extracts from the sedimentation of the past, elements 'pertaining to difference', which it then enfolds – or reiterates in new configurations that no longer take their bearing from the past as it is congealed, nor from the present as the deployment of variations informed by the past.'<sup>47</sup>

This is the repetition of the future, the reiteration of the new. Key to the third synthesis is the extraction of new movement, the movement of difference that haunts all movements and resonates through all series.<sup>48</sup> This is the actualisation of the virtual in new figurations, forms and counterpoints. What occurs is not a lining up along already cut vectors, but a return that shatters identity. In relation to sexuality, the return would not simply bring gay rights to the fore, but resonate along all series, along all political channels, in such a way as to re-figure the way in which we understand and embody social justice and belonging. The event refigures the plane upon which we are able to work, it enacts a change in self and social machine; in our particular area of concern, it reorients questions of what rights are, what they can be and what connections they can make.

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<sup>46</sup> Deleuze and Guattari, *A Thousand Plateaus*. Eg p261-263 and Cliff Stagoll, "Becoming," in *The Deleuze Dictionary: Revised Edition*, ed. Adrian Parr (Edinburgh: Edinburgh University Press, 2010).

<sup>47</sup> Louise Burchill, "Becoming-Woman: A Metamorphosis in the Present Relegating Repetition of Gendered Time to the Past," *Time and society* 19, no. 1 (2010). p94

<sup>48</sup> Williams, *Gilles Deleuze's Logic of Sense: A Critical Introduction and Guide*. p2

The consequences of this for the individual activist are discussed in the next chapter. However, before coming to the question of the event in relation to particular singularities or particular instances, it is useful to consider what the theory of event as the actualisation of the virtual might mean for how we think about activism in general. I intend to approach this through further consideration of how Deleuze approached the question of time and memory.

### **The politics of multiple histories and minor memories**

Colebrook notes that Deleuze and Guattari follow Nietzsche in viewing violence as the motor of human memory.<sup>49</sup> Indeed, they note that cruelty is the inscription of culture on bodies<sup>50</sup>: society marks bodies through a 'savage inscription', creating man and memory from chaotic, uncoded flows of desire.<sup>51</sup> This is relevant, I would suggest, as it recalls a similar argument, made by Das, who suggests that:

'In my own analysis, however I am led to conclude that as political actors, communities redefine themselves and are defined by others not by face-to-face relations but by (a) their right to define a collective past, a definition which homogenizes the different kinds of memories preserved in different visions of the community; (b) their right to regulate the body and sexuality by the codification of custom; and (c) the consubstantiality between acts of violence and acts of moral solidarity.'<sup>52</sup>

Das's argument requires some unpicking, but of key significance at this point is the interlinkage of violence, solidarity, community and social codification of the body in the creation of collective past. As such, Das politicises the relationship between time and history, and the violence through which control over history can come to be asserted. Memory is not simply recollection, but a politically contested productive act through which societies and bodies are coded and constructed. In essence, through Das, we can read Deleuzian understandings of memory as immediately in tension.

For Deleuze, memory exists as a virtual whole. Past and present do not constitute two successive moments 'but two elements which coexist: One is the present, which does not cease to pass, and the other is the past, which does not cease to be but through which all presents pass.'<sup>53</sup> In this sense then, there is not a succession from past to present, but a 'past in general',

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<sup>49</sup> Colebrook, *Deleuze: A Guide for the Perplexed*. p145

<sup>50</sup> Deleuze and Guattari, *Anti-Oedipus*. p159

<sup>51</sup> Ibid. p202

<sup>52</sup> Veena Das, *Critical Events: An Anthropological Perspective on Contemporary India* (New Delhi: Oxford University Press, 1995). p15

<sup>53</sup> Deleuze, *Bergsonism*. p59



which is presupposed by the present and without which the present could not pass.<sup>54</sup> The past coexists in each present: indeed the present exists already as memory at its most contracted. This is 'virtual memory' and the way in which it is accessed depends upon the position from which it is approached. 'The present makes an appeal according to the requirements or needs of the present situation'<sup>55</sup> and from this appeal we place ourselves at a particular level of the past, a particular level of tension. Thus 'virtual memories are made usable by present actuality.'<sup>56</sup> Actual present and virtual memory coexist according to the needs of the present and the actualisation of virtual memory at a particular level allows for the rearrangement of the virtual elements actualised. 'The pure past is of the past, but amenable to change through the occurrence of any new present.'<sup>57</sup> Thus past and present form a mutually dependent coexisting whole of past/present, actual/virtual.

This conceptualisation of virtual memory is central to Lefebvre's conceptualisation of a virtual memory of law: a 'pure past of law [that] designates the virtual whole of past law that coexists alongside the present that actualises it.'<sup>58</sup> This is why he suggests that judgment is an act of combination of perception and recollection in relation to the virtual past of law. We perceive the case at hand and through this perception, we actualise the virtual memory of law at a particular level of tension. There is a contraction of memory and a rotation towards the situation at hand.<sup>59</sup>

This does not mean that every case will automatically involve this actualisation of virtual memory. Lefebvre highlights Bergson's distinction between different kinds of memory – habit memory and recollection memory; inattentive perception and attentive perception; inattentive recognition and attentive recognition; and action-image and time-image.<sup>60</sup> In this schema, habit-memory is the much more commonly found, it is sufficiently general to be constantly inserted into perception and in doing so it makes the actualisation of a more detailed recollection unnecessary. Following this, Lefebvre makes a distinction between what he calls the problematic and unproblematic encounter.<sup>61</sup> He suggests, with Deleuze and Bergson, that in general the actualisation of the past goes unnoticed: we recognise what is familiar and select appropriate habits and recollections. In this way, we can understand how a process of inattentive judgment might work in law – a particular instant is perceived (inattentively) as a representation or reiteration of something that has already been encountered (a recollection).

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<sup>54</sup> Al-Saji, "The Memory of Another Past: Bergson, Deleuze and a New Theory of Time."

<sup>55</sup> Deleuze, *Bergsonism*. p62

<sup>56</sup> Lefebvre, *The Image of Law: Deleuze, Bergson, Spinoza*. p137

<sup>57</sup> Williams, *Gilles Deleuze's Difference and Repetition: A Critical Introduction and Guide*. p96

<sup>58</sup> Lefebvre, *The Image of Law: Deleuze, Bergson, Spinoza*. p147

<sup>59</sup> Deleuze, *Bergsonism*. p64

<sup>60</sup> Lefebvre, *The Image of Law: Deleuze, Bergson, Spinoza*. p162

<sup>61</sup> Ibid. p165

Thus a stock of habit memories and judgments are taken as already existing and able to respond to the situation at hand. 'In this sense, the question or problem posed by the image is suppressed in favour of the recognition and activity supplied by a recollection.'<sup>62</sup>

Just as Bergson and Deleuze recognise the need for inattentive perception, Lefebvre acknowledges that inattentive judgment plays a crucial role in regularising the legal process – it would be impossible to treat each case as the actualisation of a virtual memory in relation to a singularity and thus judges must have a set of codes that can be unhesitatingly actualised. The key danger in this approach is the potential for the confusion of judgment (the actualisation of the past in relation to perception and recollection) with subsumption of the particular under a general set of rules (based, we might assume, upon a particular reductive and centralised image of Man). Moreover, inattentive judgment forms only one side of judgment. In a small minority of cases, he suggests that we can identify a true encounter – a moment of uncertainty to which the rules cannot easily attach. What occurs here is a pause in which we fail to unconsciously and immediately act out the future.<sup>63</sup> This pause begins with a failure of recognition in which the encounter suspends spontaneous linkages between perceptions and recollections. This pause demands that attention is paid to the singularity at hand, and as such it reveals the virtual past as the condition and element of judgment, the need to leap into the virtual past at its more distant extensions in response to the encounter, and to experiment with recollections in order to respond to the situation at hand.<sup>64</sup> What is required is a creative re-working of memory, the opening up of the unthought-of and unsaid in response to the new.<sup>65</sup> Attentive judgment, or the active actualisation of memory, is this pause and leap into the past in response to the exigencies of the new.

This analysis leads us back to the argument that it is in the limits of rights that we see their true creative potential. When that which we are demanding of rights is difficult to articulate, or forces us to pause and experiment with how we express injustice or desire, we open up the potential for attentive judgment, for creative reworking of the past and the repetition of the future in a new form. Judgement here is active, particular and enactive, it calls for the creative repetition of law rather than an unconscious or inattentive process of recognition and representation of an encounter into an overarching framework of law.<sup>66</sup>

What remains therefore is to return to Veena Das's argument about violence, memory and history in light of notions of attentive judgment, rights and the event. The habitual use of rights

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<sup>62</sup> Ibid. p168

<sup>63</sup> Al-Saji, "The Memory of Another Past: Bergson, Deleuze and a New Theory of Time."

<sup>64</sup> Lefebvre, *The Image of Law: Deleuze, Bergson, Spinoza*. p182-3

<sup>65</sup> Rosi Braidotti, *Transpositions* (Cambridge: Polity, 2006). p173

<sup>66</sup> Mussawir, *Jurisdiction in Deleuze: the expression and representation of law*. p125

creates particular representations, particular selections and particular possibilities for action that can occur more easily than others. Moreover, these habit memories are communal rather than individual – control over how memory is actualised is a political act and constitutes part of the violence that marks bodies as human or inhuman. The ability to say what is important in memory and what counts as history plays a key role in the operation of power and the construction of a social machine. Furthermore, this capacity to dictate and to judge becomes a self-reinforcing vector of power and control: every inattentive judgment, every actualisation of habit memory reinforces the connections that create particular striations and strata within each social body.

However, an understanding of memory and judgment that functions in this way also opens up possibilities for resistance. An understanding of memory as virtual means that we must acknowledge the possibility of multiple histories, multiple selections and multiple actualisations at different levels of tension: ‘the past always and essentially gives rise to multiple histories, histories undertaken from different perspectives of the present...such a picture is rendered more complex through the necessity of recognising what the fissured and latent past enables, for the past is uncontainable within any one history or even cumulative histories.’<sup>67</sup> As such, Grosz suggests that we must bring out the ‘latencies, the potentiality of the future to be otherwise than the present.’<sup>68</sup> We must be open and attentive to the pauses and the tensions in the present through which we can seek to creatively re-actualise memory, to open up old histories and concepts and to actively think.

I have suggested that at the moment of failure of rights, at their limit or at the moment when they struggle to encompass the enormity of demands made or injustices felt, we may experience the encounter – the moment at which we stutter and pause. This stutter however, occurs in a number of dimensions; it interrupts the habitual flow of memory and recollection, but in doing so it allows for the emergence or engagement of minor practices within the major in which the ‘untimely’<sup>69</sup> is thought and known.<sup>70</sup> Stuttering is a double movement – not just a moment of critique or of refusal of the ‘molar’, but simultaneously, a moment of affirmation of difference, an act of creation and creativity. The unfolding of the encounter is something that ‘forces us to think’<sup>71</sup> something unrecognised, or inassimilable to the established *doxa*. Encounters are those things for which we have no directions for action, no pre-ordained structure for their

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<sup>67</sup> Elizabeth Grosz, "Histories of a Feminist Future," *Signs: Journal of Women in Culture and Society* 24, no. 4 (2000).

<sup>68</sup> Elizabeth Grosz, "Deleuze's Bergson: Duration, the Virtual and a Politics of the Future," in *Deleuze and Feminist Theory*, ed. Claire Colebrook and Ian Buchanan (Edinburgh: Edinburgh University Press, 2000).

<sup>69</sup> Gilles Deleuze and Félix Guattari, *What Is Philosophy?*, trans. Graham Burchell and Hugh Tomlinson (London: Verso, 2009). p111-113

<sup>70</sup> Simon O'Sullivan, *Art Encounters Deleuze and Guattari: Thought Beyond Representation* (Basingstoke: Palgrave Macmillan, 2006). p69-97

<sup>71</sup> Deleuze, *Difference and Repetition*. p176

contemplation. They are characterised by an 'unlimited qualitative' 'mad' becoming.<sup>72</sup> This, for Braidotti, is an affirmative process, against the binary thinking of Western traditions in which difference and the multiplicity of difference is affirmed as positive. We must look to express not negativity, but a 'different difference.'<sup>73</sup>

### **'Imperceptible politics' and activism in Somos, Stonewall and the GLF**

A key question at this point is how we might approach this expression of different differences through the actualisation of the event. The failure of rights makes a demand that we think differently, through new concepts, and in doing so creatively repeat the future in new and unanticipated ways. By leaping into the virtual past, we create the possibility for action along unforeseen lines in unmapped territories, uncontained by current striations of identity and memory. As such, Flieger has argued that what occurs is the making of history by those who are out of line, those who 'play the game wittily'<sup>74</sup> or those who create a new game by dissolving the rules and bringing new conjunctions to bear. What is inherent here, I would suggest, is a becoming-equal to the event, a playing out of the break of linear time and a repetition in the mode of the future. This is a mode of political action that works by following intensities and articulating moments of rupture in a process of remaking history, not to create a history that is 'true' but to attempt to work within a frame that acknowledges the multiplicity of history, the virtuality of memory and the myriad contractions and rotations through which we can leap into the past.

The goal then is an affirmative ethics that repeats the future instead of mimicking the past. It seeks the actualisation of virtual events or the 'memory of another past'<sup>75</sup> in which the actualisation of the non-actualised lines, the excluded and forgotten planes, are rethought. Such micro-politics and linkages between forces will be constantly unstable, habitually unseen and ever changing. We could argue that many political movements might begin by displaying this radical potential for becoming and for the creation of new lines of flight. But the thinking of the untimely is not an easy task and too often, it is too difficult to sustain – the image of action or the event in need of actualisation is too big and politics falls back into the idea, representation and identity.

However, Hutta has argued that even when the politics of identity and representation is at its height, causing clashes, negations and seemingly impassable aporias, it is possible to identify potential micro-movements, partly hidden and reverberating below and around larger

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<sup>72</sup> Ibid. p178 see also Halsey, "Deleuze and *Deliverance*: Body, Wildness, Ethics." p244

<sup>73</sup> Braidotti, *Metamorphoses: Towards a Materialist Theory of Becoming*. p72

<sup>74</sup> Flieger, "Becoming-Woman: Deleuze, Schreber and Molecular Identification." p62

<sup>75</sup> Al-Saji, "The Memory of Another Past: Bergson, Deleuze and a New Theory of Time."

representations. Using the example of the LGBT movements in Brazil in the late 1970s, he sketches the history of Somos – a gay activist organisation based in Sao Paolo, and notes that paradoxically, during the biggest crisis and factionalism of Somos, its fragmented and fragmenting parts succeeding in bringing about the ‘best proof’ of its presence and demands. In a fragmented coexistence, the factions of Somos were capable of positively engaging and articulating a number of different positions.<sup>76</sup>

In Dutta’s analysis, it was not through coordination and coherence that Somos was able to achieve the most interesting results. I would suggest that this is not the only instance in which unanticipated results are achieved through moments of incoherence or even breakdown. One of the most significant modern symbols of gay liberation began not with coherent political action but with drag queens rioting in New York Streets.<sup>77</sup> Such moments – or events – can function as outpourings of intensity through which the machinic connections that striate our society are re-worked or called into question. In the UK for example, we might point to the emergence of the Gay Liberation Front (GLF) in relation to the older Campaign for Homosexual Equality (CHE). Unlike the CHE, the GLF marked a moment of radicalism, a moment in which gay people began publicly to speak for themselves and demand more than pity or tolerance: ‘it taught gay men and lesbians not to be fearful to ask for what they wanted.’<sup>78</sup> As such, the GLF marked a point of rupture, a point in which LGBT individuals began to articulate their demands through their public identification as gay.<sup>79</sup>

What is significant about these events is that they feature a challenge to, or even an overturning of previously articulated categorisations and normative standards at the same time as (or even by means of) an intensity that is difficult to extend into the progression of linear time. The GLF had huge influence but lasted only 4 years – as with Somos, cracks began to appear between members and a process of disintegration began.<sup>80</sup> Similarly in later decades, other incarnations of radical lesbian and gay political groupings experienced moments of intensity followed by disagreements, movement and change.<sup>81</sup> The intensity or radical potential of the cut does not exist easily in linear time, although moments of its emergence can be traced on both sides of the event.

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<sup>76</sup> J. Simon Dutta, "Paradoxical Publicness: Becoming-Imperceptible with the Brazilian Lesbian, Gay, Bisexual and Transgender Movement," in *Rethinking the Public: Innovations in Research, Theory and Politics*, ed. Nick Mahony, Janet Newman, and Clive Barnett (2010). p148

<sup>77</sup> Kenneth D. Wald, "The Context of Gay Politics," in *The Politics of Gay Rights*, ed. Craig A. Rimmerman, Kenneth D. Wald, and Clyde Wilcox (London: University of Chicago Press, 2000). p3

<sup>78</sup> Alkarim Jivani, *It's Not Unusual: A History of Lesbian and Gay Britain in the 20th Century* (London Michael O'Mara, 1997). p172

<sup>79</sup> Ibid. p161-5. This point was also made by Jeffrey Weeks in his address at the launch of the London School of Economics Spectrum Staff Network, 19<sup>th</sup> May 2010

<sup>80</sup> Ibid. p169

<sup>81</sup> Ian Lucas, *Outrage! : An Oral History* (London: Cassell, 1998).

Such breakdowns highlight the problematic nature of thinking activism, time and events. Becoming worthy of the event demands that we repeat in the mode of the future, that we accept the possibility of undoing of old identities, old connections and old flows. This however, is a precarious position from which to implement sustainable political action. In exploring these intensities and attempting to move beyond or outside a politics of representation and identity, both Deleuze and Guattari, and Elizabeth Grosz highlight the need for a politics of imperceptibility – a politics of intensities and movements:

‘Such a politics does not seek visibility and recognition as its goals; rather it seeks actions, effects, consequences, forces which generate transformation without directing that transformation to other subjects who acknowledge its force. The imperceptible harnesses the forces that make up subjects, not by confirming them but by making them larger and more effective than subjectivity, by linking them to the inhuman, to forces below and above the level of the subject's control, which generate the real. Political struggles on such a model are not directed to affirming categories or classes of subject, but categories or classes of action.’<sup>82</sup>

The Stonewall riots, Somos, and the GLF were all, we might argue, engaged in some form of imperceptible politics. This does not mean that they were not also engaged in wide ranging debates about nomenclature and about inclusion and exclusion from state bodies; but their effects can also be measured on another level: that of impact and movement. Such events saw a refiguring of what was possible in terms of the actual, but also in terms of flows and intensities of virtual objects and actualised histories. The impact of such events resonates not just in their actualised forms, but through multiple series, connections and virtualities.

However, the conceptualisation of the politics of imperceptibility must be approached with some caution. Braidotti suggests, for example, that Grosz's (and Deleuze's) approach does not pay sufficient attention to the material, embedded context of geo-politics and power relations.<sup>83</sup> We must take care not to posit the minoritarian and the marginal as the ‘future’, or as that which reveals the micro and molecular, without paying attention to the specific, embodied difficulties faced by particular minoritarian groups. This does not mean that we must abandon the idea of a politics of fragmentation, movement and change – indeed the examples above suggest that when there is movement, change and even legal reform, the impetus and impact of this reform does not always come from well-organised or stable campaigning platforms. Even as changes are demanded, those doing the demanding are themselves negotiating questions of belonging, identity and positionality. However, care must be taken with the particularities of each

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<sup>82</sup> Elizabeth Grosz, *Time Travels: Feminsim, Nature, Power* (Duke University Press, 2005). p168

<sup>83</sup> Braidotti, R. *Metamorphoses: Towards a Materialist Theory of Becoming* p106

situation in which this occurs. We should not reify a politics of flow and flux as a 'solution' any more than we should look to a politics of essentialised identity and transcendent rights.

### **Multiple histories and fractured identities in the case of South African LGBT organising**

One of the clearest and most interesting examples of the complexities at play here concerns the history of LGBT organising, campaigning and legal reform in South Africa.<sup>84</sup> To discuss this topic in detail would require more space than is available; instead, I want to draw on a small number of examples from South African history in order to consider questions of identity, movement and imperceptibility in more detail. The most important point to note is the multiplicitous, fractured nature of South African gay rights groupings. A number of commentators have highlighted how problematic it is to even identify a gay community, or coherent South African LGBT movement.<sup>85</sup> Indeed, De Vos suggests, '[w]hether we call ourselves homosexuals, gay men, lesbians, moffies, dykes, queers, bisexuals, drag queens or even refuse altogether to label ourselves any of the above, we are less of a happy family than most theorists would like to imagine.'<sup>86</sup> Others have noted the difficulties posed by this fragmentation when attempting to look beyond the more accessible histories of white gay South African communities.<sup>87</sup> What is equally clear is the significance of the particular and unique circumstances within which LGBT organising has occurred in South Africa. This does not mean that South African LGBT structures have developed in a vacuum, on the contrary, the influence of powerful European and North American cultural and organisational factors are clear: both in terms of identity and nomenclature<sup>88</sup> and in terms of the interaction of exiled ANC leaders with gay rights groups affiliated with anti apartheid causes<sup>89</sup> there is an identifiable interaction between the specifics of South African politics and wider transnational movements which called both for the end of apartheid and for gay rights. Despite this however, we cannot assume that

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<sup>84</sup> It should be noted that here I am using LGBT as shorthand, but we must acknowledge that this shorthand creates certain problematic assumptions. These problematics are discussed in chapters three and four

<sup>85</sup> Mark Gervisser and Edwin Cameron, "Defiant Desire: An Introduction," in *Defiant Desire: Gay and Lesbian Lives in South Africa*, ed. Mark Gervisser and Edwin Cameron (London: Routledge, 1995). p4, Carl F. Stychin, "Constituting Sexuality: The Struggle for Sexual Orientation in the South African Bill of Rights," *Journal of Law and Society* 23, no. 4 (1996). p459 Annie Leatt and Graeme Hendricks, "Beyond Identity Politics: Homosexuality and Gayness in South Africa," in *Performing Queer: Shaping Sexualities 1994-2004*, ed. Mikki van Zyl and Melissa Steyn (Kwela Books, 2005).

<sup>86</sup> Pierre De Vos, "On the Legal Construction of Gay and Lesbian Identity and South Africa's Transitional Constitution," *South African Journal on Human Rights* 12 (1996). p265

<sup>87</sup> Eg Gervisser and Cameron, "Defiant Desire: An Introduction." p29

<sup>88</sup> Dohnam notes for example that 'When asked to date the beginning of the gay movement in Soweto, some young black men answered that it commenced when a gay character appeared on *Dynasty* on local South African television (McLean and Ngcobo 1994:180)' Donald L. Donham, "Freeing South Africa: The 'Modernization' Of Male-Male Sexuality in Soweto," *Cultural Anthropology* 13, no. 1 (1998). p15

<sup>89</sup> C Lind, "Importing Law, Politics and Sexuality," in *Performing Queer: Shaping Sexualities 1994-2004*, ed. M van Zyl and M Stern *Social Identities South Africa* (Kwela Books, 2005). p343

gay rights groups in South Africa have a similar or even a comparable structure or history to gay rights groups in Europe or gay rights groups in America.<sup>90</sup>

This means that it is vital to read South African LGBT organising in the context of South Africa's wider history. Many of the texts concerning LGBT issues written about or at the time of the end of the apartheid regime, resonate very clearly with the broader questions faced by a society that was drastically reforming. In particular, many commentators appear to be asking not just what gay rights groups were doing, but what these groups wanted to be and how they were trying to achieve this in the context of a radically rupturing social frame.<sup>91</sup> Pertinent questions include not just the issue of legal reform, but also the wider question of how to engage, who to include and how to present themselves as gay members of South African society.<sup>92</sup> Such texts reflect the messy borders and complex questions of what 'gayness' is. While this is an issue with which all gay rights groups must engage to some extent or another, the South African example is striking because it is presented so starkly.

What is clear is that although there were numerous debates and rifts over the issue, gay rights groups in South Africa were unable to avoid engaging with questions of race and apartheid. The Gay Association of South Africa (GASA) was founded in 1982 and while it was not the first gay group in South Africa, Gevisser notes that it was the first national organisation that constituted some kind of grassroots movement as might be found in Europe or North America.<sup>93</sup> However, while GASA did enjoy success and support, it remained very much a movement of white gay men. It was also staunchly apolitical, that is, unaligned to South African politics and more generally, committed to a non-confrontational, accommodationist strategy. Gevisser suggests that this apolitical stance cemented GASA's popularity in certain circles, but also contributed to its downfall: 'it attempted to remain outside the political fray at a time in South Africa's history in which this was untenable. It was thus ousted by the world gay community and destabilised by a growing anti-apartheid and black gay movement within South Africa.'<sup>94</sup> White middle class members of GASA showed little interest in recruitment of black members, or tolerance for those black men who did join.<sup>95</sup> Writing about his experiences as a black gay student in the late 1980s, Kleinbooi highlights how problematic this lack of focus on racial issues could be:

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<sup>90</sup> Ibid, John V. Pegge, "Living with Loss in the Best Way We Know How: Aids and Gay Men in Cape Town," in *Defiant Desire: Gay and Lesbian Lives in South Africa*, ed. Mark Gevisser and Edwin Cameron (London: Routledge, 1995).p301

<sup>91</sup> Two particularly helpful texts here were Mark Gevisser and Edwin Cameron, eds., *Defiant Desire: Gay and Lesbian Lives in South Africa* (London: Routledge,1995) and Mikki van Zyl and Melissa Steyn, eds., *Performing Queer: Shaping Sexualities 1994-2004* (Kwela Books,2005).

<sup>92</sup> Eg Digby Ricci, "Of Gay Rights and the Pitfalls of the 'PC': A Polemic," in *Defiant Desire: Gay and Lesbian Lives in South Africa*, ed. Mark Gevisser and Edwin Cameron (London: Routledge, 1995).

<sup>93</sup> Gevisser and Cameron, "Defiant Desire: An Introduction." p48

<sup>94</sup> Ibid. p51

<sup>95</sup> Ibid. p52-3



'Certainly, when it came to issues of gender and sexuality, the nationalist liberation movements do not have proud track records. But the same holds true for gay and feminist movements with regard to anti-apartheid struggles. This has brought about a situation where accusations of being 'oppressive', 'uncivilised', 'Euro-centric', 'African macho' are endlessly thrown around. The gay activists are forever fighting the homophobia of those in 'progressive' organisations, who often argue that the gays are not 'oppressed' at all. All this leaves those of us who are black and gay in the middle of an extremely unpleasant crossfire. What do we do? Who do we side with? Is there any way out?'<sup>96</sup>

More generally, racism remained a problem within the 'gay community' such as it was: nearly 20 years after the formation of GASA (and GASA's subsequent collapse) Leatt and Hendricks note that the vast majority of gay people visiting the Cape Town gay village are white men and that there have been repeated claims of racism made against the door policies of some bars and clubs in the area.<sup>97</sup> This makes the question of belonging and solidarity an extremely fraught one.

Even at the time of its founding, GASA's political conservatism hindered their ability to act publicly on issues concerning sexual orientation and contributed to a growing internal rift. The extent of this is perhaps demonstrated by GASA's response to the arrest and trial for treason of Simon Nkoli, a black gay member of GASA who had a background in anti-apartheid politics. GASA maintained that Nkoli had been a minor player in GASA and that they were unable to support him because of their apolitical stance.<sup>98</sup> However, Nkoli became a major rallying point among international anti-apartheid and gay groups. Writing about his time in prison, Nkoli recalled receiving over 150 Christmas cards from overseas in December 1986.<sup>99</sup> GASA's lack of support left it open to a huge amount of criticism both at home and abroad. As this critique mounted, progressive gay South Africans began to form explicitly political organisations in direct response to GASA.<sup>100</sup>

This is not an argument that Nkoli alone caused the dissolution of GASA or the emergence of new, political gay rights groups in South Africa. Gervisser notes for example, that by 1986, GASA's national committee was reporting that it had overreached itself and was in deep financial difficulties.<sup>101</sup> However, Nkoli does act as an important marker or catalyst for many of

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<sup>96</sup> Hein Kleinbooi, "Identity Crossfire: On Being a Black Gay Student Activist," in *Defiant Desire: Gay and Lesbian Lives in South Africa*, ed. Mark Gervisser and Edwin Cameron (London: Routledge, 1995). p268

<sup>97</sup> Leatt and Hendricks, "Beyond Identity Politics: Homosexuality and Gayness in South Africa." p304

<sup>98</sup> Gervisser and Cameron, "Defiant Desire: An Introduction." p56

<sup>99</sup> Simon Nkoli, "Wardrobes: Coming out as a Black Gay Activist in South Africa," in *Defiant Desire: Gay and Lesbian Lives in South Africa*, ed. Mark Gervisser and Edwin Cameron (London: Routledge, 1995). p254

<sup>100</sup> Gervisser and Cameron, "Defiant Desire: An Introduction." p57

<sup>101</sup> Ibid.

the tensions that those in gay politics were required to deal with, and the emergence of a new liberationist gay politics that resonated with wider society and the changing political climate.

What this suggests is that South African LGBT movements must be located in relation to South African politics and anti apartheid struggles as well as burgeoning international gay politics. Gay rights cannot be addressed outside the wider political climate and power structures. The organisation that sought relative stability found that it could not keep pace with the changing demands of a political climate that was being shaken to its roots. This rupture reverberated back through gay communities, interacting with the profound questions that were being asked about how to understand sexuality and belonging. McLean and Ncgobo point to the significance of the 1976 uprisings in Soweto in relation to the emergence of gay movements in black townships:

‘South Africa’s massive youthful majority questioned the authority not only of the state, but of the teachers and parents and pushed its own agenda to the fore. Suddenly, young people found themselves in opposition to many things their parents stood for, and this meant challenging not only conservative politics but all conservative mores.’<sup>102</sup>

It is against this history of rupture, questioning and politicisation that the South African constitutional protection against discrimination on the grounds of sexual orientation emerged.

I do not want to suggest that this means that the inclusion of sexual orientation in the equality clause of Section 9 of the of the South African Constitution came about as if by chance, or only because of a chaotic coming together of particular extra-individual forces in a moment of rupture and change. The strategy used by activists – in taking advantage of a particular moment, as well as the involvement of certain key personalities, legal elites and political activists - is hugely significant.<sup>103</sup> Stychin highlights the return of ANC leadership, bringing with them a sensitivity to gay rights issues, as well as personal contacts between activist law professor (and now judge) Edwin Cameron and members of the ANC constitutional committee as being key factors in the inclusion of sexual orientation the clause.<sup>104</sup> Fine and Nicol draw attention to the extensive submissions made by Organisation of Lesbian and Gay Activists (OLGA) to the ANC’s Constitutional Committee in September 1990 as well as the meetings

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<sup>102</sup> Hugh McLean and Linda Ngcobo, "Abangibhamayo Bathi Ngimnandi (Those Who Fuck Me Say I'm Tasty): Gay Sexuality in Reef Townships," in *Defiant Desire: Gay and Lesbian Lives in South Africa*, ed. Mark Gervisser and Edwin Cameron (London: Routledge, 1995). p180

<sup>103</sup>Lind, "Importing Law, Politics and Sexuality." p342

<sup>104</sup> Stychin, "Constituting Sexuality: The Struggle for Sexual Orientation in the South African Bill of Rights." p459

between OLGA and ANC members, particularly Frene Ginwala, Albie Sachs and Kader Asmal.<sup>105</sup> Furthermore, key figures such as Desmond Tutu were on record supporting the inclusion of sexual orientation in the equality clause.<sup>106</sup>

I would argue therefore, that what the South African context brings so clearly to the fore is the relationship between wider climate, political groupings and iconic individuals, both within South Africa and abroad. All of these factors are significant here and their interaction is not uniform or predictable. Instead there is an uneasy multiplicity of flows, resonance and interactions; a complex coexistence of particular movements, which produced particular crystallisations of action, law and identification. What is clear however, is that the attempt to maintain a limited, stratified (and sometimes shamefully self-interested) stability for gay groups, rooted in apolitical conservatism, could neither herald nor survive the seismic changes that were taking place in South Africa at that time.

In this sense, the fact that South African gay rights groups do not have the same history as those found in Europe or America brings the problematics of representation, identity and community even more clearly to the forefront. Despite the equality clause – a clause which is on the surface, immediately recognisable and translatable into other legal contexts – it is very difficult to read even a small part of the history of South African organising around sexuality without grasping the highly situated nature of the struggle and the extreme inappropriateness of a concept of a single sexual subject to which equality rights might attach (and indeed we could suggest that it is this misrecognition and misrepresentation of such a subject that feeds into the rhetoric of homosexuality as un-African). Instead, we see particular movements and particular moments grounded in particular circumstances. The key point here concerns the relationship between moments of rupture, wider social contexts and the placement of particular individuals and groups – in essence, the uniqueness of the circumstances of any event as it unfolds as an actual occurrence. Thus, we must adopt a notion of ‘immanent rights’, which are grounded in and speak to specific situations. This is the place where rights are most needed, but ironically, often most unable to reach.

This formulation sits interestingly alongside the notion of a politics of the imperceptible. What occurred in South Africa could easily be characterised as a politics of movement and flow; however this flow and movement was not random, but done knowingly, informed by key actors and specific judgments relating to the context of the political situation at hand. Therefore, while

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<sup>105</sup> Derrick Fine and Julia Nicol, "The Lavender Lobby: Working for Lesbian and Gay Rights within the Liberation Movement," in *Defiant Desire: Gay and Lesbian Lives in South Africa*, ed. Mark Gervisser and Edwin Cameron (London: Routledge, 1995). p271

<sup>106</sup> Stychin, "Constituting Sexuality: The Struggle for Sexual Orientation in the South African Bill of Rights." p462. See also Pegge, "Living with Loss in the Best Way We Know How: Aids and Gay Men in Cape Town." p307-8

imperceptibility suggests a lack of presence, what is needed is in fact an entirely grounded and real approach to the event that holds in tension (or paradox) the multiple histories, oppositions and ambiguities that don't particularly fit. These tensions are not resolvable in the actual movement of the event, but through extending into the virtual we are able to see the linkages between them or the possibility of their coexistence and re-composition. Thus, Flieger suggests that imperceptibility can be seen not as a function of invisibility but a function of radical change in consistency.<sup>107</sup> Imperceptibility demands that we re-frame the way in which we approach and view the singularities at play in any particular circumstance, in order to think not in terms of a singular identity but in terms of the relations of movements, flows, forces, affects and individuals that are singular to that particular locale.

Most significant here however, is the way in which actual expressions of the virtual must be grounded in actuality and as such, occur differently at each location while at the same time carrying with them the virtual shadow of all of their different repetitions. Thus it is in virtual memory that we can trace the connection of different histories. Moreover, it is here that we can address the power dynamics of such histories. Deleuze and Guattari write that 'there is no history but of the majority, or minorities as defined in relation to the majority.'<sup>108</sup> The centre (defined by Deleuze and Guattari as Man) forms a 'gigantic memory'<sup>109</sup>, the reproduction and resonance of this centre conditions and produces an arborescent system of memory in which everything is defined through binary opposition to a centralised point.<sup>110</sup> All memories, including those of 'the child, the woman, the black'<sup>111</sup>, are conjugated or colonised by this arborescent schema of memory. Centralised, arborescent memory controls the conditions in which they can be understood. Imperceptibility then, forms an attempt to engage in a form of movement outside the schema constituted by a dominant history. Simply privileging one history or story over another will not undo the structures that bind us to particular forms of thinking and action. Instead an approach is needed in which the way we connect across difference and virtual memory is brought into question. The task is not to represent the world, or history more accurately - such a representation will remain within or return to the 'punctual systems' of history-as-representation. Imperceptibility problematises these systems in order to trigger new perspectives, new creative lines, new actualisations of history and new repetitions of familiar themes.

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<sup>107</sup> Flieger, "Becoming-Woman: Deleuze, Schreber and Molecular Identification." p46

<sup>108</sup> Deleuze and Guattari, *A Thousand Plateaus*. p322

<sup>109</sup> Ibid. p323

<sup>110</sup> Ibid. p323

<sup>111</sup> Ibid. p323

## **The South African Constitution and the dangers of 'grand narratives' and 'blocked memories'**

Even a brief examination of groups such as GASA, Outrage or Somos brings the issue of memory and the imperceptible to the fore. To some extent, the issue faced by such groups is one of their relationship to arborescent schemas of memory or identity – do they try to remain within an hierarchical systems based on subjectivity and a binary relationship with a central image of man, or should some other mode of action be sought? The first point to make in response to this is that groups may not necessarily face a free choice in such matters: the way in which an organisation is able to act will be limited by circumstance. GASA's apolitical stance made possible the existence of a limited gay community so long as that community was willing to submit to the dictates of an arborescent power structure. However, when other factors and forces brought these structures into question, GASA's position became untenable – the submission to a particular regime made the organisation dependent upon the continuation of that regime. Other relationships are yet more complex: Outrage! in the UK was able to retain a relatively radical position in relation to state powers and schemas. However, Outrage! was complemented by the existence of Stonewall – the more respectable face of gay rights activism in the UK. Moreover, as we saw in Chapter Four, Outrage!'s position on issues involving the oppression of same sex sexuality outside the UK has seen it implicated in complex global hierarchies of power and dominance. Thus, while we can use a schema of imperceptibility to approach issues of subjectivity and micro-history, once we begin to seek an emplaced imperceptibility, the complex micro-politics at play become clear. It is easy to criticise the arborescent system, and to demand non-hierarchical transversal becoming in relation to the structures of power in operation, but what once may have been a new line of flight or becoming can, from a new perspective or articulation, become re-territorialised. As Patton reminds us 'societies are constantly building up and breaking down.'<sup>112</sup> What this means is that we must be constantly open to the actualisation of new histories and new connections. This can only be done through an understanding of the relationship of the virtual and the actual, in which the virtual must be actualised in the actual but carries with it multiple repetitions. It is in this way that we approach both the specificity of each grounded locale and the connectedness of the intensities that are played out differently in each actualisation.

What this attentiveness to virtuality highlights is the limits of repeating in the actual without a simultaneous virtual repetition or reordering of intensities that is seen in the event. This failure of reordering can be contrasted with Lefebvre's 'inattentive' recognition and judgment – or more accurately in this case 'inattentive' repetition. In some cases, this inattention is easily

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<sup>112</sup> Patton, *Deleuze and the Political*. p107-8

identifiable. A clear example of this might be the growth of 'Pride' events or marches. In Pride, we can trace a direct link to the event of the Stonewall riots: a hugely significant moment, which heralded a seismic shift in the way in which gay activism formulated itself. Pride marches and events are now held in many different countries, symbols of Pride, particularly the rainbow flag, have substantial international traction.

The danger that inattentive repetition poses here, is that Pride becomes a fixed representation or a 'blocked memory'<sup>113</sup> bound to hierarchical understandings of sexuality that risk overcoding and obscuring the complexity of sexual difference.<sup>114</sup> There are increasingly regular critiques of Pride as a depoliticised and commercial exercise rather than one that is political or transgressive. This does not mean that all Pride marches are necessarily bad: as I have been arguing throughout this chapter, a Pride march must be contextualised and emplaced within the (micro) histories and politics of a particular locale. The risk is that devices such as Pride become modes of territorialisation that reinforce particular power dynamics and identity categories thus losing the sense of radical reorientation that we might identify in Stonewall. In analysing the Sydney Mardi Gras, Mason and Lo note that 'Just as a 'mirror inverts but also reflects an object' (Turner, 1982: 40), the parade fleetingly turns established sexual mores on their heads yet ultimately justifies and buttresses these same mores.'<sup>115</sup> I would suggest that the dynamic they identify here is one in which the celebration of gay rights becomes a controlling refrain rather than a line of flight. Pride comes to represent a status of partial inclusion that devolves upon the maintenance of particular norms, binaries and social controls that operate both within the gay community and along wider social frames. As such, what is repeated or returned to is an actual occurrence without a corresponding shift in intensities or movement of the virtual. The repetition is of the past rather than of the future and in this context, action becomes bound to what Hanafin has termed (albeit in the context of postcolonial Irish identity rather than sexual rights) an 'equilibrium maintaining obsessive ritual of repetition.'<sup>116</sup> The event of Stonewall was double sided – the refiguration of virtual objects was marked by a change in what was possible in actual occurrences. In celebrating Pride, the risk is that action occurs only in the dimension of actual occurrences, there is an inattentive repetition of the identities, subjectivities and communities, corresponding with a molar narrative of social inclusion and cohesion. The virtual repetition of different differences remains incomplete and the line of flight is re-coded.

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<sup>113</sup> Williams, *Gilles Deleuze's Difference and Repetition: A Critical Introduction and Guide*. p43

<sup>114</sup> See eg Martin F. Manalansan IV, "In the Shadows of Stonewall: Examining Gay Transnational Politics and the Diasporic Dilemma," *GLQ* 2 (1995).

<sup>115</sup> Gail Mason and Gary Lo, "Sexual Tourism and the Excitement of the Strange: Heterosexuality and the Sydney Mardi Gras Parade " *Sexualities* 12, no. 1 (2009). p117

<sup>116</sup> Patrick Hanafin, "Valorising the Virtual Citizen: The Sacrificial Grounds of Postcolonial Citizenship," *Law, Social Justice & Global Development Journal* 1 (2003). p8

I return to this issue in the following chapter. What is important at this point however, is the impact of the exclusion of the virtual from actual politics. By focusing only on the actual – on the actuality of the march, the strategy of coming out or occupation of space - and ignoring the virtualities at play, or even simply by excluding troublesome micro-politics and multiple histories in pursuit of a more simplified political narrative, we territorialise our history into one overcoding formulation.

I do not want to suggest that this overcoding of Pride is an operation of ideology or false consciousness. Instead, the situation at play here relates to the danger of the event and thinking in the untimely. By repeating at the level of the actual – repeating history in a way that that sees no change in intensities at the level of the virtual – we repeat a code. The draw of this code is its certainty: Pride and ‘mainstream’ gay rights politics give us a frame in which we can act and in which we can anticipate certain outcomes. Deleuze notes that the initial reaction to the event is that it is too big, or too difficult to become worthy of the event. It is in this context that Braidotti’s argument for a located politics resonates most forcefully – why should those who are distanced from the privileged centre give up what little they have achieved in order to ‘be worthy’ of a virtual event, or to embrace an uncertain and unknowable future repetition? And we should note here, that while Deleuze and Guattari may privilege the line of flight, nothing in their writing is unambiguously good or bad. A limited freedom, or at least a plan for how to fight in registers and languages that are known, is surely much safer than freedom in an uncertain, unknowable register. Faced with this uncertainty, it is small wonder that many might prefer or even desire heteronormativity over becoming-other and might actually prefer to do exactly what Deleuze and Guattari warn against in *Anti-Oedipus* and form a movement which works for gay rights within the arborescent binaries constructed by the dominant system.

The situation is even more complicated when we add the consideration of a rights based politics. In the context of the South African Constitution, De Vos has argued that both Constitution and judges actively engage with recent South African history. This is reflected in both the postamble to the 1993 interim constitution and the preamble to the 1996 constitution, in which the recognition of past injustices and the struggles of those who have ‘suffered for justice and freedom in our land’ are explicitly referenced.<sup>117</sup> De Vos explores the way in which these references contribute to the construction of a ‘grand narrative’ of South African history, which emphasises one particular ‘truth’ of progress from a dark apartheid past to an

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<sup>117</sup> Pierre De Vos, "South Africa's Constitutional Court: Starry Eyed in the Face of History?," *Vermont Law Review* 26 (2002). p846

enlightened future of freedom and human rights. This history is enunciated, reinforced and legitimated in constitutional text and judicial practice.<sup>118</sup>

The problem with this approach lies with the argument that there is no singular version of history. A grand narrative must necessarily privilege some views and voices over others and it tends to do so in relation to a vector of power and through the construction of particular representations and identities. Thus history becomes a mirror of society.<sup>119</sup> This is problematic because the grand narrative becomes a tool of constitutional interpretation: a mode by which judges attempt to separate law and politics and to apply an 'objective' standard to their judgments rather than face questions of subjectivity and thus arbitrariness, politicisation or bias.<sup>120</sup> Thus Kentridge J notes:

'I am well aware of the fallacy of supposing that general language must have a single 'objective' meaning. Nor is it easy to avoid the influence of one's personal intellectual and moral preconceptions. But it cannot be too strongly stressed that the Constitution does not mean whatever we might wish it to mean.'<sup>121</sup>

In this context the 'grand narrative' is the device by which this issue can be overturned. 'History' as legitimated in the constitutional grand narrative provides 'objective' criteria for judicial decision-making. However, De Vos argues that history, even the widely agreed-upon constitutional version of history, is always highly political and by choosing which history to enunciate, judges are making a political and ideological decision. '[H]istory is inevitably a product of the present and reflects our understanding of the present... Any rendition of the past that we call history is therefore a reflection of how we see ourselves in the present.'<sup>122</sup>

We can highlight the danger in operation here through Hanafin's exploration of this issue in the context of the 1937 Irish constitution and the postcolonial drive to create a new history and mythology of a unitary and pure Ireland.<sup>123</sup> He argues that any attempt to create a unified national essence or history within a legal text will always be incomplete 'because there always remains something beyond representation, a real which can never be reduced to a mere symbolisation.'<sup>124</sup> In the context of Irish constitutional history, the 1937 Constitution was based in a particular conception of national unity and patriarchal, heterosexual values. It was, Hanafin

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<sup>118</sup> Pierre De Vos, "A Bridge Too Far? History as Context in the Interpretation of the South African Constitution," *South African Journal of Human Rights* 17, no. 1 (2001).

<sup>119</sup> De Vos, "South Africa's Constitutional Court: Starry Eyed in the Face of History?" p837

<sup>120</sup> De Vos, "A Bridge Too Far? History as Context in the Interpretation of the South African Constitution." p5

<sup>121</sup> *State v Zuma and Others* [1995] 1 LRC 145 cited in De Vos *Ibid.* p5

<sup>122</sup> *Ibid.* p20

<sup>123</sup> Patrick Hanafin, *Constituting Identity: Political Identity Formation and the Constitution in Post-Independence Ireland* (Aldershot: Ashgate, 2001). p10-12

<sup>124</sup> *Ibid.* p5



argues, less a 'neutral legal document for a post-colonial pluralist democracy' than an expression of the values of a 'deeply conservative ruling class.'<sup>125</sup> These values became the 'history' to which judges returned, in judgments that made appeals to 'traditional' constitutional values. This, Hanafin argues, prevented the development of the constitution 'in line with paradigmatic shifts in society' and instead 'imposes a particular moral view on individual citizens.'<sup>126</sup> The constitution of 1937 was not to be and could not be the last word on Irish national identity. Instead, constitutional reinterpretation was necessary to include those who had been previously excluded or silenced.<sup>127</sup> The narrative of the Irish constitution has been substantially 'reauthored', and the dominant form of constitutional nationalism has been substantially reformed through a challenge to its need for unity and closure.<sup>128</sup>

Thus, while the 'founding narratives' of the 1937 Irish Constitution and South African Constitution are very different, the struggle of the Irish Constitution either to maintain a coherent narrative of Irish identity or to adapt to changing societal conditions, illustrates the problem faced by South African judges. The 'official history' of a move into a bright and diverse new future as a result of great struggle and sacrifice is an important narrative and a valid history, but it cannot be viewed as the only story that needs to be told. The 'plasticity of legal language' in the constitutional text must allow for the possibility of its 'subversion from within'<sup>129</sup> and the histories of nation and identity written into a constitutional document must be open to a process of disruption by new and contrary notions of state and selfhood.<sup>130</sup> By choosing only one 'closed' version of history, South African judges risk rendering themselves ill-equipped to acknowledge new injustices or violations of citizens' rights. This is because the supposedly objective history has a stabilising but also a masking effect:

'As South African society changes and as conditions change, new threats to freedom, liberty and equality will require courts to find new understandings of the Bill of Rights, something that will be difficult to do in the face of the grand narrative strategy. Given South Africa's recent past, and given the ever-changing power relations in society, the grand narrative is a powerful rhetorical tool that could be used by politically conservative or executive-minded

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<sup>125</sup> Patrick Hanafin, 'Issues of Territoriality and Identity in the Irish Constitution' in *Identity, Rights and Constitutional Transformation* ed Patrick Hanafin and Melissa S. Williams (Aldershot: Ashgate, 1999) p75

<sup>126</sup> Ibid. p55

<sup>127</sup> Hanafin, "Issues of Territoriality and Identity in the Irish Constitution" p78

<sup>128</sup> Hanafin, *Constituting Identity: Political Identity Formation and the Constitution in Post-Independence Ireland* p99-100

<sup>129</sup> Ibid. p101

<sup>130</sup> Hanafin, Patrick and Melissa S. Williams. "Introduction" in *Identity, Rights and Constitutional Transformation* ed Patrick Hanafin and Melissa S. Williams (Aldershot: Ashgate, 1999) p2

judges to silence those who fail to see justice only or exclusively as rectifying the 'mischief of apartheid.'<sup>131</sup>

De Vos argues instead for a self-conscious and continually produced history. In this way we move away from the idea of history as objectively knowable. This does not prevent the implication or enunciation of South African history within its constitutional document, but instead reads the history of South Africa as open ended and changing, and as such the Constitution becomes a 'transformative document, one that requires continual reinvention to make sense of the changing world and country we live in - a contingent product of human agency.'<sup>132</sup>

A further level of complexity is found in consideration of sexual orientation and the anti-discrimination clause. I have argued above that rights are paradoxically double sided – they contain movements of both territorialisation and openness to deterritorialisation. In this instance, this paradox is expressed in several different ways. It is clear that the equality clause contributes to the creation of what van Zyl calls a 'holding space' for those who practice same sex relationships and identify as lesbian and gay in that it legitimises the creation of a discursive spaces for talking and thinking about sexuality.<sup>133</sup> Thus, in engaging with the law, activists have succeeded in changing the way in which sexuality can be addressed in the South African context: a rupture has occurred, and as a consequence what was not possible or speakable before has become so now. However in opening space for this vocabulary, a vector of shaping, control and even exclusion is simultaneously activated: the freedom to name oneself as lesbian or gay can easily become a compulsion to do so through this terminology alone. Put differently, this constitutional holding space works in two directions at once – it is both regulatory *and* empowering, territorialising *and* deterritorialising:

'If the creation of the homosexual in this arena makes possible the advance of social controls, it also makes possible the formation of a 'reverse' discourse; homosexuality can begin to speak in its own behalf, to demand that its legitimacy of 'naturalness' be acknowledged, often in the same vocabulary, using the same categories by which it was medically disqualified.'<sup>134</sup>

This is not the only operation of paradox at work here. Also of concern are the limits to the correlation between legal re-configuration and social change. Both legal and social dimensions

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<sup>131</sup> De Vos, "A Bridge Too Far? History as Context in the Interpretation of the South African Constitution." p27-8

<sup>132</sup>De Vos, "South Africa's Constitutional Court: Starry Eyed in the Face of History?." p862

<sup>133</sup> Mikki van Zyl, "Shaping Sexualities - Per(Transforming) Queer," in *Performing Queer - Shaping Sexualities 1994 - 2004 - Volume One*, ed. Mikki van Zyl and Melissa Steyn, *Social Identities in South Africa* (Kwela Books, 2005). p19

<sup>134</sup> Pierre De Vos, "'the Constitution Made Us Queer': The Sexual Orientation Clause in the South African Constitution and the Emergence of Gay and Lesbian Identity," in *Sexuality in the Legal Arena*, ed. Carl Stychin and Didi Herman (London: Athlone press, 2000). p200

underwent a reordering and there is a clear resonance between these legal, social and political dimensions, but in the case of same sex sexuality, legal rights did not lead immediately to social acceptance. The two dimensions are related but are not a mirror of each other and as such, there are limits to the impact that constitutional change has had on gay and lesbian lives.<sup>135</sup> Instances of violence, condemnation and discrimination still occur and more significantly, there is a limit to the usefulness of the equality clause in addressing these violations. Equality or anti-discrimination must instead be read through a contextualisation of the social and economic conditions in which LGBT lives are lived. Thus, while we might read the equality clause as victory, we must also contextualise the circumstances in which these rights are experienced or demanded, in particular we must be aware of the uneven impact that such rights gains will have. Of key significance here is Stychin's argument that the social realities of rights must always be at the forefront:

'For the majority of lesbian and gay South Africans, rights claims must be grounded within that overriding socio- economic reality. For example, a 'right to privacy', frequently a central tenet of lesbian and gay politics, is meaningful for many only when it is linked to the availability of affordable housing. So too, an argument for equal spousal benefits for employees must be connected to the urgent need for employment opportunities. Thus, socio-economic reform must be central to lesbian and gay politics in order to create a credible agenda nationally.'<sup>136</sup>

Overarching protections are therefore of little use without emplacement within a particular location.

The final paradox in operation here concerns the reverberation of the event through wider legal and social norms – that is, the event that heralds 'becoming', unanticipated change and refiguration in several directions at once. In relation to sexuality we might suggest that what occurs is not so much paradox, as a double layer of effects or transformation through the event. The first layer concerns identifiable legal changes – the equality clause and cases that are argued in relation to this clause. The second concerns the wider reconsideration of social and legal norms of family, relationships, sexuality and citizenship. De Vos argues that the early

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<sup>135</sup> Oliver Phillips, "Ten White Men Thirteen Years Later: The Changing Constitution of Masculinities in South Africa, 1987-2000," in *Performing Queer: Shaping Sexualities 1994 -2004* ed. Mikki van Zyl and Melissa Steyn, *Social Identities South Africa Series* (Kwela Books, 2005). p150-1, De Vos, "the Constitution Made Us Queer": The Sexual Orientation Clause in the South African Constitution and the Emergence of Gay and Lesbian Identity." p290, Charles Hattingh, "Struggles of Authenticity," in *Performing Queer: Shaping Sexualities 1994 - 2004*, ed. Mikki van Zyl and Melissa Steyn, *Social Identities South Africa* (Kwela Books, 2005). p199, N Crawhall, "Balancing Freedom and Fear: Gay Men, Sex and Hiv in the Post Apartheid Era," in *Performing Queer: Shaping Sexualities 1994-2004*, ed. M van Zyl and M Stern *Social Identities South Africa Series* (Kwela books, 2005).p269, Leatt and Hendricks, "Beyond Identity Politics: Homosexuality and Gayness in South Africa." p304 p306

<sup>136</sup> Stychin, "Constituting Sexuality: The Struggle for Sexual Orientation in the South African Bill of Rights." p462

jurisprudence of the court suggested that there was some movement on this second level of change; the rhetoric of the court seemed to demand scrutiny of traditional institutions such as the nuclear family and marriage.<sup>137</sup> However, rhetoric has not matched actuality and the courts have tended to remain within a framework of sameness and identity which centralises a normative standard of the traditional heterosexual family, despite acknowledgement of the heterogeneity of family forms in South Africa.

Thus, though groundbreaking, the Constitution goes so far and no further. It remains situated in a frame of a singular history and arborescent normative structures of family life: a standard by which other families can be judged in relation to questions of equality and discrimination. We can argue therefore, that judgment here may be emplaced and located within a social and historical terrain, but it remains enmeshed within an ontology of sameness rather than difference, and thus the scope for attentive judgment in relation to an open-ended conception of a (virtual) history of difference, is limited.

We might therefore remain with Das in arguing that we must recognise the politics of histories as contingent pluralities rather than closed, explanatory wholes, and in this case, the political role that rights might play in these historical and political processes. Rights must be consciously situated within a place, a time and a genealogy in order to precipitate particular actualisations, particular memories and particular judgments. It is in this way that we can make the link between attentive judgment in response to the event, politics of location and multiple histories. The expression of rights forms the link between the virtual memory of law and the particular situation in which a sense of injustice has led to the making of a rights based claim. There is a complex connectivity here that relies not on the positing of an abstract subject of rights, but on the continuing differential expression of a response to injustice that currently takes its form in various different articulations of rights. Thus of interest is not transcendental static rights, but instead the way in which rights are used to actualise and creatively express the intensities of the virtual. Lefebvre writes that 'Law...can be defined by its lines of flight – it is a plane of immanence constituted by a ceaseless lifting up and setting down of its parts.' My argument is that in the event, the lines of flight of rights can escape and be actualised in new formulations. What remains therefore, is the question of the best response to this intersection of rights and event – or more accurately the way in which activists might use an understanding of attentive judgment, encounter and event as a political tool, while embedded within particular locations. This discussion is continued in the following chapter.

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<sup>137</sup> Pierre De Vos, "Same Sex Sexual Desire and the Re-Imagining of the South African Family " *South African Journal on Human Rights* 29 (2004). p186

## Sexual orientation rights as paradox and encounter in the context of uneven locations and multiple histories

In relation to rights and gay rights politics, I have argued that the failure of rights to articulate injustice signals the encounter. I would further suggest that through an engagement with gay rights politics, we can trace the potential for the occurrence of such encounters. This is in part due to the open, desiring nature of sexuality and its tendency to escape coding and seek new forms of flow and expression. Deleuze and Guattari note that: 'Sexuality is by no means a molar determination that is representable in a familial whole; it is the molecular underdetermination functioning within social and secondarily familial aggregates that trace desire's field of presence and its field of production.'<sup>138</sup> The interaction of a discourse of rights that founds itself in the image of molar man with the desiring production of sexuality almost demands a failure of communication, a moment of 'ethical weight' or of thinking the untimely.

Most significantly, we may use gay rights to speak a molar language, but such molarity cannot silence minor practice, microproductions, escapes or lines of flight. I would suggest that these minor practices are the elements of which Das is speaking when she refers to the struggle to control memory and history. They are the moments that work outside or against what is constituted as molar history, the history of man. As such they are molecular movements, 'memories of another past'<sup>139</sup>, 'the small voice of history'<sup>140</sup>, or the 'outlaw narratives within the [legal] text.'<sup>141</sup> They are what lead Eduardo Nierras to comment: 'When we say to straight people, or, more rarely, to Western gay people, "we are like you" we must remember to add, "only different."' "<sup>142</sup>

Of key importance however, is the way in which these molecular forces are immanent, shifting and specifically located. Rights and sexuality are connections of particular striations and flows over a particular social body. They form a cartography of how to embody desire within particular social imaginaries. However, such social terrains must always be uneven – they are striated and mapped in ways that impact differently in different biological and physical locations. If in this terrain the subject can be viewed as constituted as a set of spatio-temporal co-ordinates<sup>143</sup>, then what Povinelli refers to as the 'uneven distribution of the flesh'<sup>144</sup>, or what

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<sup>138</sup> Deleuze and Guattari, *Anti-Oedipus*. p200

<sup>139</sup> Al-Saji, "The Memory of Another Past: Bergson, Deleuze and a New Theory of Time."

<sup>140</sup> Ranajit Guha, "The Small Voice of History," in *Subaltern Studies 9: Writings on South Asian History and Society*, ed. Shahid Amin and Dipesh Chakrabarty (Delhi: Oxford University Press, 1996).

<sup>141</sup> Hanafin, *Constituting Identity: Political Identity Formation and the Constitution in Post-Independence Ireland*.p100

<sup>142</sup> Eduardo R. Nierras, "The Risky Business of Desire: Theoretical Notes for and against Filipino Gay Male Identity Politics" in *Ladlad: An Anthropology of Philippine Gay Writing*, ed. J. Neil C. Garcia and Danton Remoto (Manila: Anvil, 1996). p199

<sup>143</sup> Braidotti, *Transpositions*. p130 p169

Braidotti identifies as the unequal subjectification to biopower<sup>145</sup> - the spaces of ordinary and extra-ordinary bodies in space and time - become hugely significant. In essence, the knowledge of these uneven or unequal distributions must be understood not as a secondary point, or a problematic aside, to engaging in representational 'mainstream' politics, but instead as absolutely key to understanding the topography that limits any approach to our political endeavours – be it rights based or otherwise. As such, any attempt to map our political struggles in this way leads to and demands a responsible politics of location, for once we have mapped such a terrain, the ethical imperative is that we situate ourselves within it and attempt to become aware of its blind spots and hidden histories. Politics of location and of emplacement becomes key to the way in which we understand the social terrains and political imaginaries within which we find ourselves.

We might conclude then, by arguing with Deleuze, that the paradox represents not an impasse but an unfolding of lines in several different directions. Such an unfolding begins (in the middle) with a stuttering, a failure of habit and of inattentive memory and perception. This stuttering can constitute an encounter. Here, I read the encounter as the actual side of the event in which the event is the virtual transformation that is actualised in the moment of rupture or the cut. This rupture constitutes an upheaval that is not a new beginning but a reconfiguration, a new selection that in selecting affirms chaos and chance. This affirmation resonates through all series, through all past and memory. This is why a rights politics that simply adds to the existing body of accepted citizens will never, alone, be sufficient. As the event resonates, it refigures how we constitute our social machines, not just for non-heteronormative citizens and their specific institutions, but for all elements of the social body.

However, in relation to both activism and rights, the event signals a micro-politics and a fleeting intensity that is easily overcoded or territorialised into new cartographies of struggle. This is why while we can approach sexuality through rights, universal gay rights that will remain always and eternal and unsubjected to challenge and modification are highly problematic. There is not one single encounter, or failure: the paradox as a material event provokes Deleuzian repetition. This is why Nierras makes the claim for sameness in difference. The intensity of events may be familiar but the actual is not – the actual does not resemble the virtual event that it actualises. Furthermore, the repetition of actual events *alone* constitutes nothing more than a simple over-coding: an exercise of power that ignores materiality and geo-

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<sup>144</sup> Elizabeth A. Povinelli, *The Empire of Love: Toward a Theory of Intimacy, Genealogy, and Carnality* (London: Duke University Press, 2006). p8

<sup>145</sup> Rosi Braidotti, "Locating Deleuze's Eco-Philosophy between Bio/Zoe-Power and Necro-Politics," in *Deleuze and Law: Forensic Futures*, ed. Rosi Braidotti, Claire Colebrook, and Patrick Hanafin (Basingstoke: Palgrave Macmillan, 2009). p97

politics. A focus on the material is key, but a material that ignores the virtual results only in a new transcendental disjunction rather than an immanent use of the disjunctive synthesis in which the paradox of connection across difference and alliance, rather than genealogy or teleology, can be sustained.

We can frame this problematic in terms of Lefebvre's analysis of judgment as the selection and exclusion of particulars. If each attentive judgment or each new articulation of rights is a leap into the virtual memory of law, we must accept that one leap will never be enough. We might accept Deleuze and Bergson's argument that without habit memory and habit perception our institutions cannot function, but at the same time we must recognise that each new attentive leap, each new refiguration, holds the potential to become habit, and thereby may in future require new leaps and new figurations. As such, no identity is constant and no solution is permanent. The law forms a virtual memory that we actualise creatively multiple times in response to multiple different occasions – it requires grounded particularity or local dramatisation rather than transcendental wholeness.<sup>146</sup>

I would suggest that a key part of this approach is a recognition of the operation of the virtual in the actual and the existence of a past that bears the potential to open itself again.<sup>147</sup> Events do not mark the emergence of a truth of social relations from chaos, so much as a refiguring of the flows through which our social machines connect and arrange themselves. The challenge for the activist is the question of how we become worthy of the event. The relationship between activist and event is the subject of the next chapter.

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<sup>146</sup> Mussawir, *Jurisdiction in Deleuze: The expression and representation of law*

<sup>147</sup> Colebrook, *Deleuze: A Guide for the Perplexed*. p83

## **Chapter 6 – Spatialising Rights: Emplacing and embodying the potential and the limit of sexuality rights claims**

### **Pride as location, Pride as affect: Uneven embodiment in gay rights politics**

The previous chapter addressed the relationship of the event and time in which the event becomes a reconfiguration of intensities that disrupts linear time and instead plunges into the pure past in order to return a new present. However, this understanding of the event presents certain practical problems. I have already discussed the difficulty of sustaining the energy of an event; but this difficulty points to a further question – that of how to act in relation to the event. Put simply, what does being worthy of the event entail? We are left, it seems, with a mode of becoming that reconfigures or selects from pure virtualities, but cannot be sustained, repeated or predicted. We cannot even necessarily be sure that a re-configuration will produce a better set of circumstances. And even if it does, the change produced will not be permanent. Given these restrictions, the pressing question is of whether such an approach is useful at all, and if it is, how we should act in relation to it: how should we orient ourselves to a progression of time that contains the possibility of the event and radical reorientation? In essence, thus far we have critiqued the abstracted sexual subject, the identities upon which this subject is reliant, and engaged with the way in which the event and eternal return explodes these identities. The question however, is what is left once this critique has been made: can we return to a materially embedded person as a frame for action and if so, how do we become worthy of the event as material individual? Furthermore, what impact does an understanding of law as a differently repeated virtual memory have upon how this action might progress?

It is important to recognise that the starting point here is not the relationship between rights and a transcendental subject, but that of rights and the embedded individual. To highlight this distinction we can return to the question of Stonewall as an event that has been somewhat overcoded and reterritorialised and thus neutralised. The key point here however, is that the meaning of the event ‘Stonewall’ is unfixed – it acts as a complex archive of feeling, intensity and action that is engaged and actualised with various different levels of intensity and attentiveness. I am suggesting therefore, that we might read Stonewall as a moment of rupture and re-configuration of gay rights politics (particularly Western gay rights politics) that has had multiple reverberations through various social and political strata. What is significant here is the two-sidedness that we can find in Stonewall: the way in which it encompassed both a virtual rearrangement of intensities and an actual embodiment of this in the days of rioting. I have already noted the way in which a return or repetition of the actual without a corresponding virtual repetition can become a matter of habit or a blocked memory that facilitates a new



territorialisation of the line of flight. The point that is relevant to this chapter however, is the question of how we return to events such as Stonewall – and the fact that the way in which we look back depends upon our vantage point and is thus a question of subjective perception. The dynamics of such an approach can have more or less radical outcomes. Thus, of key importance is the way in which an event which, at least on the surface, holds increasingly ‘global’ recognition (or at least, increasingly global resonance in terms of visibility, impact, politics etc.) is something that is experienced and lived very differently in different locales. The virtualities at play may be similar, but their intensities and the way in which they connect at each actual point of reference is very different, the way in which the individual experiences this differs yet more. As Braidotti notes: “‘We’ may be in *this* together, but we differ quite radically in terms of locations and allocations of power.”<sup>1</sup> Individuals are unevenly distributed and thus differently implicated within frameworks of law, rights and power. Uneven subjection to biopower means that once we return to a consideration of materially embedded individuals – the ‘human’ of human rights – we can expect very different outcomes from each articulation of intensities.

This uneven subjection occurs in a number of different ways. In this chapter, I want to begin by highlighting its effects in relation to the ‘event’ of Pride through variations in the inhabitation of space and the circulation of affect. In many ways, Western-influenced gay rights politics is filled with questions of claiming and carving out spaces – marches through previously ‘straight’ streets, the creation of gay districts and gay bars, the coding of certain bodies as gay through patterns of speech, movement and dress. This is complicated by the fact that the space in question – the space that is undergoing this territorialisation – is not neutral or unoccupied, but complex, multilayered, and significantly for our purposes, informed by long and continuing histories of Western dominance and colonisation. The queering of space is not a simple tactic that can be easily applied in all contexts. Nor can we see space as equally occupied by all ‘queer’ people, or even assume that all queer people would seek to occupy space in the same way.<sup>2</sup> Instead, we must recognise that Pride and other gay spaces may be ambiguously understood by those participating,<sup>3</sup> or experienced as ‘not really my scene’ on the grounds of race, class,<sup>4</sup> bodily

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<sup>1</sup> Rosi Braidotti, “Locating Deleuze’s Eco-Philosophy between Bio/Zoe-Power and Necro-Politics,” in *Deleuze and Law: Forensic Futures*, ed. Rosi Braidotti, Claire Colebrook, and Patrick Hanafin (Basingstoke: Palgrave Macmillan, 2009). p97

<sup>2</sup> Judith Halberstam, *In a Queer Time and Place: Transgender Bodies, Subcultural Lives* (London: New York University Press, 2005). p43-45

<sup>3</sup> Stephen M. Kates and Russel W. Belk, “The Meaning of Lesbian and Gay Pride Day: Resistance through Consumption and Resistance to Consumption,” *Journal of Contemporary Ethnography* 30, no. 4 (2001). p419

<sup>4</sup> Yvette Taylor, “‘That’s Not Really My Scene’: Working-Class Lesbians in (and out of) Place,” *Sexualities* 11, no. 5 (2008), Nina Held and Tara Leach, “‘What Are You Doing Here?’: The ‘Look’ and (Non) Belongings of Racialised Bodies in Sexualised Spaces,” in *Out of Place: Interrogating Silences in Queerness/Racality*, ed. Adi Kuntsman and Esperanza Miyake (York: Raw Nerve Books, 2008).

aesthetic or wealth.<sup>5</sup> What may be an expression of solidarity and protest in one locale may be a performance of exclusivity or commerciality in another.

Broadening this analysis, we can question the way in which we spatialise concepts such as Western/non-Western without also considering notions of gender, class and ethnicity. Thus, in viewing Pride as a recognisable global symbol, we risk overcoding a line of flight and even more worryingly, ignoring other vectors of oppression or embodiment as they are experienced in different national and local arenas. As such, we might agree with Puar, that 'while it is predictable that the claiming of queer space is lauded as the disruption of heterosexual space, rarely is that disruption interrogated also as a disruption of racialised, gendered, and classed spaces. Nor are such disruptions understood in tandem with a claiming of class, gender and racial privilege as well.'<sup>6</sup> Furthermore, the disruption of space works in relation to particular understandings of sexuality, which can function to create a hierarchy of both 'good' and 'bad' homosexuality, and 'good' and 'bad' homosexual space, that is often much more complex than the dynamics of the political situation at hand might lead us to believe.<sup>7</sup> The shaping of space according to a particular regime of visibility quickly hardens into socio-political demands that risks leaving little room for multiplicity and diversity of affect and approach. As Vidal-Ortiz notes, 'whites 'teach' liberation strategies to non-Whites, so that 'coming out' is not a failed attempt in the service of hegemonic gayness. In the end, gayness must be spoken; there is no room for any other expression of non-heteronormative identity or positionality within this paradigm of gayness/the closet/homophobia.'<sup>8</sup>

Thus the power dynamics of queer occupancy of space (and time) must be understood as complex and ambiguous. The spectacle of grand scale occupations of space goes hand in hand with multiple other stories of queer resistances, queer life, or perhaps just life itself, existing and flowing outside the spectacular or markedly queer.<sup>9</sup> Occupation, embodiment and even a welcome in space is not a simple construction and this complexity lurks beneath our visible spectacles of political action.

What is key, I would argue, is that space does not pre-exist our occupancy of it – through our actions, we create both queer and heterosexual space: we locate and embody what such spaces mean. The event that was 'Stonewall' reconfigured space in a particular way, but its repetition

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<sup>5</sup> Gordon Waitt, "The Sydney 2002 Gay Games and Querying Australian National Space," *Environment and Planning D: Society and Space* 23 (2005). p448-9

<sup>6</sup> Jasbir K. Puar, "A Transnational Feminist Critique of Queer Tourism," *Antipode* 34, no. 5 (2002).

<sup>7</sup> David A. B. Murray, "The Civilized Homosexual: Travel Talk and the Project of Gay Identity," *Sexualities* 10, no. 1 (2007).

<sup>8</sup> Salvador Vidal-Ortiz, "The Puerto Rican Way Is More Tolerant': Constructions and Uses of 'Homophobia' among Santería Practitioners across Ethno-Racial and National Identification " *Sexualities* 11, no. 4 (2008). p480

<sup>9</sup> Rosie Harding, *Regulating Sexuality: Legal Consciousness in Lesbian and Gay Lives* (Abingdon: Routledge, 2011). p181

in multiple different forms contributes, sometimes, but not always, to the neutralisation of the creative force that erupted at Stonewall. This is why, despite its perhaps clichéd aspect in the face of queer critiques, Pride is so interesting a phenomenon – it foregrounds spatiality, but beyond this, it foregrounds the fact that we are not just beings in space, but agents who create and are created by the spaces that we occupy. This occupation can easily encompass a mode of territorialisation and stratification that attaches to both space and body.

The second mode of uneven embodiment under consideration relates to the movement of affect or emotion through and around bodies. The question of Pride as a political movement also brings questions of its flipside – shame – to the fore.<sup>10</sup> Most pertinent here is the role of shame not as a static, stable object but as a social force that operates as both a spatialising and codifying process. Shame is ‘contagious’ in that it moves between and ‘infects’ bodies; it is that which ‘puts us in our place’<sup>11</sup> and significantly, that acts as a flow of communication and contact.<sup>12</sup> Interestingly then, the assertion of pride as a political dynamic and politicised space begs questions of the affects of shame as a structuring flow within discourses of sexuality and sexual identity. Even more significant however, is the way in which as shame and sexuality become a key discourse within queer thought, shame itself becomes a contested affect. Shame is not experienced in the same way by all individuals: both gay women, and non-white gay people may have a very different relationship towards or with particular emotions - including shame – than those of their white male counterparts.<sup>13</sup> Again therefore, while it might be interesting to view shame, or pride and affect as free flowing, such flows touch and are felt by subjects in significantly different ways – either due to a simple idiosyncratic refusal of ‘normal’ affect<sup>14</sup> or, more often, due to our differently embodied existence in space, place and time. If shame can be constituted as a feminising, emasculating emotion<sup>15</sup>, what impact will it have upon those who are differently situated in relation to dominant or subordinated masculinities?

Thus, notions of power and hierarchy are never very far away from any analysis of LGBT discourses. Halberstam notes, ‘[a]s Eve Kosofsky Sedgwick’s work has shown in compelling detail the history of twentieth-century literature in an Anglo American context has been indelibly marked and influenced by the contributions of white gay men; consequently, literature has been a powerful vehicle for the production and consolidation of gay identity (Sedgwick

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<sup>10</sup> Eve Kosofsky Sedgwick, "Shame, Theatricality and Queer Performativity: Henry James's the Art of the Novel," in *Gay Shame*, ed. David M. Halperin and Valerie Traub (London: University of Chicago Press, 2009). p59

<sup>11</sup> Sally R. Munt, *Queer Attachments: The Cultural Politics of Shame* (Aldershot: Ashgate, 2007). p103

<sup>12</sup> Sedgwick, "Shame, Theatricality and Queer Performativity: Henry James's the Art of the Novel." p50

<sup>13</sup> Judith Halberstam, "Shame and White Gay Masculinity," *Social Text* 84-85 23, no. 3-4 (2005). Hiram Perez, "You Can Have My Brown Body and Eat It Too," *Social Text* 84-85 23, no. 3-4 (2005).

<sup>14</sup> Eg Phil Hutchinson, *Shame and Philosophy: An Investigation in the Philosophy of Emotions and Ethics* (Basingstoke: Palgrave Macmillan, 2008). p108

<sup>15</sup> Halberstam, "Shame and White Gay Masculinity."p226

1986, 1990).<sup>16</sup> But, she continues, this production of identity has taken particular forms – it has spoken to and about particular concerns, but occluded others. As Ahmed argues, ‘the world is shaped by the directions taken by some bodies more than others.’<sup>17</sup> Some gay bodies are much more able than others to shape the world – both gay and straight – and to consider locatedness through a vector of sexuality alone is to miss the complicated assemblage (haecceity) that makes up each individual at different points in space and time.

In essence, I am returning to the issue explored in Chapter Four – what we might broadly term a power differential that ensures that even within discourses of resistance, the ability to engage with notions of resistance and to communicate injustice is profoundly asymmetrical. Those closer to the ‘centre’ are better placed to explain the unfairness or injustice perpetrated by this centre and thus ironically, an ability to articulate depends upon the hierarchical dominance of a centre over a dominated periphery. As such, while it would be perhaps too simplistic (not to mention reductive) to claim simply that the ‘gay’ world is shaped more by white gay male bodies than others in all circumstances, it is clear that even under the most apparently clear symbols or emotions are multilayered strata of complexities, embodiments and actions. Even before the law divides or consolidates affect, flow or movement of queerness, alternative sexualities are both shared and not shared. Sexuality exists as a complex multiplicity – neither a single entity, nor a collection of unconnected singularities. The question is whether it is possible to embody and engage with this contradiction in a meaningful way.

### **Mapping sexuality rights: extra-representational communication as resonance and reverberation**

My starting point in relation to these uneven embodiments is the question of connection that retains difference, or connection that can maintain ambiguity and change outside of representation. This is key because gay rights politics has a paradoxical structure: the ‘global gay’ both exists and does not exist – it needs ambiguity and lack of definition, which are the very things that gay rights politics, if not used very carefully, will occlude. This issue has been explored in previous chapters: in essence rights rely on some form of representation and these representations facilitate an act of gathering together, grouping and analogising. My interest is in the possibility of rights that can operate while foregrounding a selection or connectivity that sustains difference even as it connects singularities. What occurs here is not representation, synthesis or the formation of a new community that can be easily represented (in either the sense of representation or re-presentation) but a mutual vibration of particular series and singularities in relation to each other. I have previously suggested that in this context, sexuality

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<sup>16</sup> Halberstam, *In a Queer Time and Place: Transgender Bodies, Subcultural Lives* p41

<sup>17</sup> Sara Ahmed, *Queer Phenomenology: Orientations, Objects, Others* (London: Duke University Press, 2006). p159

might be seen as the aleatory point or the invisible square that moves along series, causing them to reverberate and vibrate together without demanding their merging or synthesis. Thus, the aleatory point is communicative, but through communication (resonance) it affirms divergence. 'Everything happens through the resonance of disparates, points of view on a point of view, displacement of perspective, differentiation of difference, and not through the identity of contraries.'<sup>18</sup> Here I read Deleuze as suggesting a communication that does not rely on identity or upon representation and that through the acknowledgement of virtual connectivities and multiple histories, we can hold differences both in tension and in communication with each other.

In the context of sexual politics, we might read this extra-representational communication as 'reverberation'. Reverberation seems to be a much more useful term than representation not only because it hints at the preservation of difference, but because it highlights movement, flow and contact between bodies, affects and forces. It suggests zones of change and even contamination, without reducing these changes to a single, predictable direction. Rather reverberation suggests multiplicitous divergence into new and unexpected ways of being. Reverberation, hints at becoming over being – at flow rather than blocks of space-time and in the context of this thesis, of sexuality as a flow of connection and becoming rather than an object that can be defined or possessed.

Adi Kuntsman repeatedly employs reverberation as a tool of analysis in her work on sexuality. She draws the term from work on 'soundscapes' in urban settings in which sound can become distorted, muffled, combined with others, but can also form a musical expression of difference against the dominant and uncontrollable flow of urban life.<sup>19</sup> Reflecting on reverberation, she notes that:

'Reverberation is a concept that makes us attentive to speed and stillness, distortions and resonance, intensification and dissolution; as such, it also allows the tracing and opening up processes of refiguration. Reverberation also takes us away from the questions of ontological origins: even though its definition in acoustics assumes one single origin of each sound, the description of the urban musical soundscape, which predominantly inspires me here, is about *multiple* movements of *multiple* sounds, coming from *multiple* origins and bouncing off *multiple* surfaces, often simultaneously and in contradiction to each other. In that sense, reverberation is

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<sup>18</sup> Gilles Deleuze, *The Logic of Sense*, ed. Constantin V. Boundas, trans. M. Lester and C. Stivale (London: Continuum, 2004). p200

<sup>19</sup> Phillip Tagg, "Subjectivity and Soundscape, Motorbikes and Music," in *The Popular Music Studies Reader*, ed. A. Bennett, B. Shank, and J. Toynbee (London: Routledge, 2006).

multi-nodal and has its own agency; its effects are unpredictable, and as such, can never be fully known.<sup>20</sup>

Reverberation forces us to think multiplicity, or more accurately, to think multiple, a-centred movements territorialisations, deterritorialisations and transpositions. If we employ reverberation as a device for thinking sexuality and thinking rights, we must discard notions of foundational events that remain fixed in space and time just as we must discard notions of fixed and concrete ways of being. Reverberation recalls the resonance of the empty square through a series, creating movements and divergent connections.

However, the question of reverberation can be pushed in another direction – that of music and the refrain. Deleuze and Guattari's image of the child singing to itself in the dark is again useful here. In this image, the child sings a song in order to reassure itself; he repeats a phrase in order to orient himself to the darkness and chaos around him.<sup>21</sup> In this way, the song becomes a territory, a rendering of order and even predictability upon the unknown. Thus, the refrain stabilises: we repeat what is known and familiar and in doing so, we bring both space and time into our control, the world is mapped and to a degree, ordered. This observation chimes interestingly with Sara Ahmed's suggestion that compulsory heterosexuality could be seen as a form of RSI –

'Compulsory heterosexuality shapes what bodies can do. Bodies take the shape of norms that are repeated over time and with force. Through repeating some gestures and not others, or through being orientated in some directions and not others, bodies become contorted: they get twisted into shapes that enable some action *only insofar as they restrict the capacity for other kinds of action.*'<sup>22</sup>

Repetitions of particular refrains become second nature: predictable representations of how the world is and what it should be. However, Deleuze and Guattari suggest that 'in order to join with the forces of the future' one 'ventures from home on the thread of a tune.'<sup>23</sup> In doing so, the question of what we can do and what connections can be made changes. Just as the refrain can encircle and enclose, new rhythms and speeds emerge in which there is movement towards new milieus, new becomings. We are in a milieu of space-time that vibrates at a particular speed, what is at stake here however, are the 'sounds' that diverge, the new rhythms and patterns that sound a different note to dominant forces.<sup>24</sup> Sound, for Deleuze and Guattari, is a both 'cutting

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<sup>20</sup> Adi Kuntsman, *Figurations of Violence and Belonging: Queerness, Migranhood and Nationalism in Cyberspace and Beyond* (Oxford: Peter Lang, 2009).

<sup>21</sup> Gilles Deleuze and Félix Guattari, *A Thousand Plateaus*, trans. B Massumi (London: Continuum, 2004).

<sup>22</sup> Ahmed, *Queer Phenomenology: Orientations, Objects, Others*. p91

<sup>23</sup> Deleuze and Guattari, *A Thousand Plateaus*. p344

<sup>24</sup> Ibid p331-2

edge of deterritorialisation' and that which is capable of 'the most massive of reterritoralisations.'<sup>25</sup> The question here is one of variation (reverberation) that finds shared levels of intensity, points of convergence (resonance), disjunction, and the effects of this. In this context, rhythmic movement away from the norm has a boundary marking or locating purpose – a drawing (or verbalising) of difference against a background of sameness. And these reverberations are always present – as Deleuze and Guattari suggest, history is the history of perception – how we perceive (or hear in this case) particular assemblages, reverberations and multiplicities depends upon our 'thresholds of perception.' New conditions make possible the perception of that which was previously overlooked or buried.<sup>26</sup>

In this way, we can think a trajectory of movement and connection that is passive – in that it does not depend primarily on representation or a synthesising subject, but the movement of the aleatory point. This resonance creates the conditions for selection, connection and the ascription of meaning among multiple movements and reverberations. On innumerable planes, there are innumerable concepts that 'resonate and connect up with mobile bridges.'<sup>27</sup> In this mode, events reverberate through each series and each plane, through language and bodies. Events mark changes in intensities that are not predictable, nor evenly played out, yet they cannot be thought of simply in terms of actual adjustments – to do so is to miss the virtual element of each actualisation and thus the connectedness of virtual objects in the pure past, which themselves are set in motion in the resonance of the event. Such an understanding of reverberations, becoming and radical movements leaves us in uncertain political terrain. Our mappings of rights and sexuality are refrains – and one aspect of the refrain is its deterritorialisation. Thus we cannot demand the repetition of rights and sexuality in a specific, permanent form. How then do we distinguish between useful political action and either inertia in the face of a multiplicity of options or a fetishisation of radical change just as others might fetishise clarity?<sup>28</sup> Braidotti notes that –

'Deleuze sets the desire for transformations or becomings at the centre of the agenda. Politics is ultimately a matter of existential temperature, of passions and yearning. It is about engendering and sustaining processes of 'becoming' - a concept that is central to philosophical nomadism. This specific sensibility combines a strong historical memory with consciousness and the desire for resistance. It rejects the sanctimonious, dogmatic tone of dominant

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<sup>25</sup> Ibid. p383

<sup>26</sup> Ibid. p382

<sup>27</sup> Gilles Deleuze and Félix Guattari, *What Is Philosophy?*, trans. Graham Burchell and Hugh Tomlinson (London: Verso, 2009). p76

<sup>28</sup> Gayatri Chakravorty Spivak in Rosi Braidotti, *Transpositions* (Cambridge: Polity, 2006). p27

ideologies, Left or Right of the political spectrum, in favour of a production of joyful acts of transformation.'<sup>29</sup>

For Deleuze, Braidotti argues, there are two forms of power – power as restrictive (potestas) and power as productive (potentia). Political action should be a focus or pursuit of the second. However, in Braidotti's reading of Deleuze she highlights the need for a politics of location, an embedded, material foundation for our understandings of change and transposition.<sup>30</sup> This focus brings us to the second point regarding reverberation and political action: that reverberation may be a form of deterritorialisation, or a form by which an assemblage is constituted – a hub by which series can resonate in tune with each other - but this reverberation does not mean that all bodies and matter occupy the same location within a soundscape. As Ferguson notes, sexuality is not an object that can be owned, but a discourse that is also racialised, classed or gendered.<sup>31</sup> In essence, sexuality is unevenly embodied, identity is unevenly produced, power and resistance operate in different ways at different points. What at one node may seem like a disruptive vibration, at others is a mode of territorialisation.

Thus, the flow of sexuality is uneven, or at least, unevenly recognised. This unevenness is problematic because, ironically, any attempt to map the contours of sexuality or to map the differential embodiment of sexuality, risks obscuring as much as it reveals. Therefore if we draw again on Sedgwick's argument that the framework of the closet and coming out has been the overarching structure of gay oppression this century<sup>32</sup>, we must also acknowledge that for every location in which this framework is true or partially true, there is also a location in which the structure of the closet/coming out/visibility operates differently, or doesn't operate at all.<sup>33</sup>

This is why we must attempt to think not in terms of representation but of movement both in and out of tune with other series, through and around an uneven and shifting terrain. Such a mode captures the unevenness of the actual, the embeddedness of particular circumstances and thus the particularity in which the virtual is played out. In this way we can capture the multiplicity of disjunctions without demanding that they cohere accurately around a single representational hub. Thus, when Eduardo Nierras reminds us that in the context of global gay

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<sup>29</sup> Rosi Braidotti, *Transpositions* (Cambridge: Polity, 2006) p27

<sup>30</sup> Rosi Braidotti, *Nomadic Subjects: Embodiment and Sexual Difference* (New York: Columbia University Press, 1994). p21. Rosi Braidotti, "On Putting the Active Back into Activism," *New Formations* 68 (2009). p48. Rosi Braidotti, "Becoming Woman: Or Sexual Difference Revisited," *Theory, Culture & Society* 20, no. 3 (2003). p12

<sup>31</sup> Roderick A. Ferguson, "Of Our Normative Strivings: African American Studies and the Histories of Sexuality," *Social Text* 84-85 23, no. 3-4 (2005). p87

<sup>32</sup> Eve Kosofsky Sedgwick, *The Epistemology of the Closet* (Hemel Hempstead: Harvester Wheatsheaf, 1991). p71

<sup>33</sup> eg Brian Whitaker, *Unspeakable Love: Gay and Lesbian Life in the Middle East* (London: Saqi Books, 2006).p23, p54-59



rights politics 'we are like you...only different'<sup>34</sup> we can begin to unpick the complexity of what he means by this.

### **Tracing the site and limits of rights claims: Figurations, conceptual personae and becoming-other**

What is significant when discussing uneven sexual-scapes is the fact that rights are also subject to an uneven distribution – their reach, hold and impact is neither uniform, nor necessarily predictable. Rights too, we might argue, can be envisaged as a shaping, structuring flow rather than as objects that can be possessed. Part of this is clearly due to the historical location of rights – as the preserve of the universal male white subject, the questioning of which has led, as Wendy Brown argues, to a situation in which, '[j]ust when polite liberal (not to mention correct leftist) discourse ceased speaking of us as dykes, faggots, coloured girls, or natives, we began speaking of ourselves this way.'<sup>35</sup> From this speaking, rights demands soon followed – demands for recognition of subjectivity were formulated in terms of difference rather than sameness.

Rights then, are a shifting unevenly embedded discourse that must be considered as a point of struggle rather than in terms of simple subjectivity. Rights touch and select bodies unevenly; depending on circumstance, they will fit or fail to fit. Ironically, the more we try to universalise rights (perhaps the more we try to view rights in an abstract rather than immanent, embedded frame) the more they are apt to fail. In asking what rights are capable of, we must view multiple potentialities and trajectories, relative to location and temporal facets. Or – the way in which rights are currently actualised is only one small articulation of what they can do.

These problematics must be explored in relation to embodied materiality. The question therefore is of how to engage with Braidotti's call for the production of joyful acts of transformation in relation to the complex movements, reverberations and resonances of rights and sexuality as material as well as virtual assemblages. Put more succinctly, what is required is an exploration of the site of enunciation of rights claims, or more significantly for our purposes, the site of the failure of rights, as potential sites of emergence of new figurations of alternative sexualities – new materially embedded points of disruption that are both productive and dangerous. Following Haraway and Braidotti, we can view such figurations as personae through which we can think differently and illuminate previously unseen blindspots, or map previously neutral power relations:

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<sup>34</sup> Eduardo R. Nierras, "The Risky Business of Desire: Theoretical Notes for and against Filipino Gay Male Identity Politics" in *Ladlad: An Anthropology of Phillipine Gay Writing*, ed. J. Neil C. Garcia and Danton Remoto (Manila: Anvil, 1996). p199

<sup>35</sup> Wendy Brown, *States of Injury: Power and Freedom in Late Modernity* (New Jersey: Princeton University Press, 1995). p53

'Figurations are not merely metaphors, but rather markers of more concretely situated historic positions. A figuration is the expression one's specific positioning in both space and time. It marks certain territorial or geopolitical co-ordinates, but also points out one's sense of genealogy, of historical inscription.'<sup>36</sup>

In this sense then, the figuration of new sexual subjectivities verges towards the monstrous other – the critical disruptive merging of what was previously separate, or the embodiment of the impure or the previously unseen or unseeable. Monsters or the monstrous for Haraway are 'boundary creatures', creatures that have a destabilising effect.<sup>37</sup> For Braidotti, the monster (in this case the monster-as-woman) is the sign of the in between, the indefinite, the ambiguous.<sup>38</sup> Tellingly, the places off the edges of the map are marked by mermaids and monsters<sup>39</sup> and thus the figuration-as-monster is something that resists taxonomy or permanent emplacement, yet recalls the specificity and locatedness of its emergence. Instead, monsters are that which move at particular disruptive speeds, they are 'bands or inflections of intensities'.<sup>40</sup> Or, to continue with the cartographic language: monsters constitute a new, unknown selection or bringing together of co-ordinates, but in doing so they constitute less a new map as an exposure of the limits of the old.

This means that a figuration is less a stable marker of a position, than a way of re-opening and re-inscribing the co-ordinates of subjectivity, self and legitimacy. Figurations allow us to think problematics, or to think the structures in which we are embedded. In this way, they are similar to Deleuze and Guattari's *conceptual personae* – the usually nameless and subterranean persona who must be reconstituted by the reader.<sup>41</sup> The conceptual persona, Deleuze and Guattari argue, is not the representation of the philosopher, but the philosopher's heteronym, or that which produces selection and movement and in doing so constitutes a new style of living.<sup>42</sup> 'Possibilities of life or modes of existence can be invented only on a plane of immanence that develops the power of conceptual personae.'<sup>43</sup> As with figurations however, conceptual personae are not psycho-social types or even aesthetic figures; they are that which constitute 'points of view according to which planes of immanence are distinguished from one another or brought together, but they also constitute the conditions under which each plane finds itself

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<sup>36</sup> Rosi Braidotti, *Metamorphoses: Towards a Materialist Theory of Becoming* (Cambridge: Polity Press, 2008). p90

<sup>37</sup> Donna J. Haraway, *Simians, Cyborgs and Women: The Reinvention of Nature* (London: Routledge, 1991). p2

<sup>38</sup> Braidotti, *Nomadic Subjects: Embodiment and Sexual Difference*. p83

<sup>39</sup> Anne McClintock, *Imperial Leather: Race, Gender and Sexuality in the Colonial Contest* (London: Routledge, 1995). p28

<sup>40</sup> Patricia MacCormack, "Unnatural Alliances," in *Deleuze and Queer Theory*, ed. Chrysanthi Nigianni and Merl Storr (Edinburgh: Edinburgh University Press, 2009). p141

<sup>41</sup> Deleuze and Guattari, *What Is Philosophy?* p63

<sup>42</sup> D. N. Rodowick, "Unthinkable Sex: Conceptual Personae and the Time Image," *Invisible Culture: An Electronic Journal for Visual Studies* (2000). p8

<sup>43</sup> Deleuze and Guattari, *What Is Philosophy?* p73

filled with concepts of the same group.’<sup>44</sup> Conceptual personae are modes of rupture, orientation and selection on a plane of immanence, always situated between multiple points of enunciation.<sup>45</sup>

Thinking figurations and conceptual personae highlights two key points. The first is the creative force that comes from the constitution of different points of view or different branchings that are facilitated by conceptual personae: Rodowick suggests that conceptual personae populate philosophies and minor arts where they function as a constituting an *ethos* that does not yet exist.<sup>46</sup> Conceptual personae are an illumination of what the centre may not want seen – the ‘actualisation of monstrosity.’<sup>47</sup> However, key to this monstrosity is its immanence: neither the conceptual personae nor the figuration is a metaphor, but an embedded stage of metamorphoses.<sup>48</sup> The second point of relevance here is the significance of the virtual dimension to the functioning of conceptual personae – though immanent and embedded, they exist not as psycho-social types but as selecting forces, bridges between concepts, or ways of re-figuring already figured relations. This does not mean there is no relationship between conceptual personae and psycho-social types. Indeed it is the presence of these psycho-social types that enables an embeddedness and materiality of thinking: ‘The features of conceptual personae have relationships with the epoch of or historical milieu in which they appear that only psychosocial types enable us to assess.’<sup>49</sup> But we cannot stop at this point – it is in the extraction of particular features of psycho-social types and their ‘determination purely of thinking and of thought’ beyond the actuality of a particular historical or social strata that permits the thinking of conceptual personae as ‘*thought-events*’ on a plane of immanence.<sup>50</sup> ‘Conceptual personae and psychosocial types refer to each other and combine without merging.’<sup>51</sup> Thus, a conceptual persona is a selection, a diagram or a mode of reconstituting elements in the pure past rather than remaining bound simply to linear time. They act not just as a mode of deconstruction, but a mode of distancing and re-constitution.

Burchill addresses these issues through analysis of the conceptual persona ‘becoming-woman’ or ‘girl’<sup>52</sup>, particularly in relation to the past, present and future repetitions of time that operate in a Deleuzian schema. She argues that becoming-woman is not the repetition of a stereotype,

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<sup>44</sup> Ibid. p75

<sup>45</sup> Rodowick, "Unthinkable Sex: Conceptual Personae and the Time Image." p5

<sup>46</sup> Ibid. p8

<sup>47</sup> Rosi Braidotti, "Terratologies," in *Deleuze and Feminist Theory*, ed. Claire Colebrook and Ian Buchanan (Edinburgh: Edinburgh University Press, 2000). p171

<sup>48</sup> Ibid.

<sup>49</sup> Deleuze and Guattari, *What Is Philosophy?* p70

<sup>50</sup> Ibid.

<sup>51</sup> Ibid. p70

<sup>52</sup> Louise Burchill, "Becoming-Woman: A Metamorphosis in the Present Relegating Repetition of Gendered Time to the Past," *Time and society* 19, no. 1 (2010). Also Deleuze and Guattari, *A Thousand Plateaus*.

even in the form of ironic mimesis. As such, what is occurring here is not a simple re-casting or even a problematisation of normalised gender roles, but a mode of individuation that releases elements from the norms, historical structures and flow of time in which they cohere and their repetition 'free from subjective over-coding' in a mode of time 'equally unbound by any form of transcendental standpoint serving to link memories and hopes together in a single knowing story.'<sup>53</sup> In this understanding, conceptual persona as becoming woman operates with knowledge of, and closely linked to, present conceptualisations of feminine gender traits, but it is not restricted by them, instead extracting elements of these traits 'pertaining to difference' and repeating and reiterating them anew outside the structures of currently coded narratives and memories. Thus the conceptual persona is wholly 'there', but also 'not-there' in that it is bound neither by the constraints of the actual or of linear time. As such, the conceptual persona or figuration is not a new symbol that can be captured and coded into law, but an opening of law or norms or social strata. It is a way of thinking difference.

This means that conceptual personae or figurations create not a solution, but a means of seeing, viewing and creating differently in relation to the plane on which we currently find ourselves. I would contend that moments of failure in relation to rights and sexuality constitute actual instants in which we might approach these figurations – in which we might illuminate the monstrous as monstrous and unknown rather than attempting to integrate that which is other into an already existing schema. This then, might be seen as 'the disruption of totality' which Cornell has argued can give us a glimpse of elements in their interrelatedness, outside an overcoding system of identification.<sup>54</sup> However, the question remains as to how we as activists or lawyers should act in relation to this illumination. We can use a feminist deployment of Deleuze to forward a complex critique of the relationship between sexuality and rights, but I want to suggest that this is not all that the interaction of sexuality and rights is capable of. Instead, there remains the question of whether there is an ethical dimension to Deleuze's writing through which we might constitute a means of action.

### **Immanent rights, embodiment and counter-actualisation at the fault lines of sexuality and law**

James Williams argues that Deleuze's philosophy does make these ethical demands, but the way in which it does so is not straightforward. The centralisation of pure difference in a Deleuzian ontology means that all identity and representation, as well as the notion of these identities and representations as permanent, is an illusion: 'identity is only a cloak thrown over deeper pure

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<sup>53</sup> Burchill, "Becoming-Woman: A Metamorphosis in the Present Relegating Repetition of Gendered Time to the Past."

<sup>54</sup> Drucilla Cornell, *Philosophy of the Limit* (London: Routledge, 1992). p31

differences.’<sup>55</sup> The suggestion that underlying everything is motion and difference encompasses an extreme anti-foundationalism – there can be no fixed morality, sexuality or law as such conceptualisations work through representations that are always open to reconstitution and re-configuration.

In one sense however, this lack of solid ground on which to base an analysis of sexuality does not hinder us. We could argue for example, that rights too, lack any legitimate foundations, or more accurately, any attempt to ascertain solid theoretical foundations for our rights claims are either problematic, highly Western-centric or simply blind to the violence through which such foundations were constituted and normalised.<sup>56</sup> This means that we can shift both rights and sexuality into a schema of flow and flux. Sexuality is that which moves, flows and desires; it resists classification and can always be repeated in a different combination, or can set new series into resonance – or reverberation. Rights, in a double sided, immanent articulation, act as Deleuzian machines in that they code, connect and break down flows depending upon the circumstances in which they are deployed.

We begin then, from the intersection of multiple flows or series that are by their nature, unfixed and changing. There is no truth of sexuality and no truth of rights. A politics that assumes that there is, must necessarily ‘throw a cloak’ over deeper differences and movements. In relation to this, I have already discussed the possibility of the politics of the imperceptible – the politics of movement and flow rather than identities.<sup>57</sup> What such a politics asks however, is how we might emplace ourselves within such imperceptibility: how can we, as individuals, act in relation to uncertain connections? Ahmed has suggested that the point should not be to find a ‘queer line’ but rather should ask ‘what our orientation towards queer moments of deviation will be.’<sup>58</sup> As such, we must seek to assert not a particular, already established viewpoint, but to orient ourselves to particular flows and shifts.

Thus we are not just subjects of discourses that shape and embed us. We are also agents who can resist and shape the flows around us in turn. And our embodiment is central to this; Braidotti for example, works through the Spinozist understanding that bodies are not neutral – knowledge and ideas are mediated through the body<sup>59</sup>, thus as Gatens argues, consciousness is

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<sup>55</sup>James Williams, *Gilles Deleuze's Difference and Repetition: A Critical Introduction and Guide* (Edinburgh: Edinburgh University Press, 2003). p56

<sup>56</sup> Rhonda E. Howard, "Dignity, Community and Human Rights," in *Human Rights in Cross Cultural Perspectives: A Quest for Consensus*, ed. Abdullahi A. An-Na'im (Philadelphia: University of Pennsylvania Press, 1992). Brewster Kneen, *The Tyranny of Rights* (Ottawa: The Ram's Horn, 2009). Balakrishnan Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance* (Cambridge: Cambridge University Press, 2003).

<sup>57</sup> Eg Elizabeth Grosz, *Time Travels: Feminsim, Nature, Power* (Duke University Press, 2005).

<sup>58</sup> Ahmed, *Queer Phenomenology: Orientations, Objects, Others*. p179

<sup>59</sup> Braidotti, *Transpositions*. p148-9

not socially constructed on a neutral body.<sup>60</sup> As such, the way in which we experience, embody or understand the contradictions outlined above will be highly contingent and contextualised.

Moreover, the body, or the individual, is connected not just socially, but virtually:

'[A]ll things are individuals or incomplete parts of individuals defined as reciprocal relations between Ideas, intensities, sensations and actual identities. Any individual is an expression of all Ideas, though more or less clearly and obscurely. It is an expression of all intensities though in different configurations of envelopment. Through the Ideas it expresses and the intensities that envelop it, an individual's actual side is connected to all other actual things.'<sup>61</sup>

Each individual expresses the world, or the intensities of the world, as a singularity that changes over time. The 'other' experiences and expresses such intensities differently, making encounters with the other not a mode for knowing the world better or more simply, but an increase of intensity<sup>62</sup> or perhaps even disjunction. Connection here is not simple, but troubling: a moment of encounter and change. As Deleuze and Guattari argue 'the other appears as the expression of the possible. The other is a possible world as it exists in the face that expresses it and takes shape in a language that gives it a reality.'<sup>63</sup> The concept of the Other Person becomes the condition under which the perceptual field is reconsidered and redistributed. The other defines and limits the perceptual field and the field of the possible through her presumed ability to see what the self cannot. 'The other appears here as the normative frame that determines what I see, where I move, what I can touch. The Other is the authority that subsumes my perception into a specific perspective.'<sup>64</sup> The presence of the other fulfils a structuring role here, rendering certain things visible, proximate and possible and others distant or unknowable. 'The other is a matrix of becoming in his or her own right and it generates a new kind of becoming on which the same actually depends for their own self definition. What matters is what occurs in the in-between spaces, the intervals, the transitions between their respective differences.'<sup>65</sup>

This configuration exposes the individual's relationship to the virtual (individual as expression of intensities). The face of the other exposes not a clearer or fuller view of the world, virtual objects or intensities, but their expression in different forms. '[T]he Other person does not

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<sup>60</sup> Moira Gatens, *Imaginary Bodies: Ethics, Power, and Corporeality* (London Routledge, 1995). p12

<sup>61</sup> Williams, *Gilles Deleuze's Difference and Repetition: A Critical Introduction and Guide*. p191

<sup>62</sup> Ibid. p209

<sup>63</sup> Deleuze and Guattari, *What Is Philosophy?* p17

<sup>64</sup> Andreas Philippopoulos-Mihalopoulos, "Law, Space, Bodies: The Emergence of Spatial Justice," in *Deleuze and Law*, ed. Laurent de Sutter and Kyle McGee (Edinburgh: Edinburgh University Press, 2012).

<sup>65</sup> Braidotti, *Metamorphoses: Towards a Materialist Theory of Becoming*. p72

restore transcendence to an other self but returns every other self to the immanence of the field surveyed.’<sup>66</sup> The other does not offer a truth, a community or a transcendent objectivity, but a becoming. Otherness is the subversive presence that disrupts self and communal identity.

It is through this understanding that we must address the possibility of an individual’s being worthy of the event. Deleuze argues that we must respond to the event through counter-actualisation or vice-diction: the actor replays the event as a singularity, but this singularity captures the idea, the depth or the virtual, of which the counter-actualisation is just one single expression.<sup>67</sup> In counter-actualising the event ‘an individual must learn to create in such a way as to express how it is a perspective on the whole of reality, but also how its sensations express an intense and singular transformation of that reality.’<sup>68</sup> A counter-actualisation captures what is singular and universal at the same time. In this way we can be worthy of the event; in doing so, what we counter-actualise or repeat is not truth or something that is objective or transcendent, but is a becoming: a reiteration of reality in forms that were not previously possible.

This formulation rests on a Deleuzian conception of the Idea that must be very carefully approached. Ideas are ‘the relations between things in the virtual that are the condition for the evolution of actual things’<sup>69</sup>, they are the condition for changes in actual ideas, but are not themselves actual. Williams notes that the Idea can only be known partially as it is expressed: the Idea does not have a fixed identity as its elements are pure differences.<sup>70</sup> The point here is that the Idea as expressed in an actual situation is incomplete until it is given sensation, and this sensation is expressed by the individual. The Idea must be expressed through spatio-temporal actuality even though this actuality can only express one side or one particular of the whole of the Idea. ‘The Idea and an objective situation have to be articulated through the individuation of a thing for which the Idea is a problem and for which the situation is a spatio-temporal given.’<sup>71</sup> As such we require embeddedness, agency, situation, cases and spaces to express the Idea, to connect across the virtual and across different levels, or contractions of history. These connections are more than actual – they involve the reconstitution of intensities of virtual objects – but they can only be played out in the particular, which acts not as a closing down of possibilities but as an opening up, as an expression of the myriad potentialities in circulation. Thus the individual will determine a particular series of problems and intensities. Through the

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<sup>66</sup> Deleuze and Guattari, *What Is Philosophy?* p48

<sup>67</sup> Deleuze, *The Logic of Sense*. p171-3

<sup>68</sup> Williams, *Gilles Deleuze’s Difference and Repetition: A Critical Introduction and Guide*. p157

<sup>69</sup> Ibid. p112

<sup>70</sup> Ibid. p112

<sup>71</sup> Ibid. p188

connections an actor makes and the vice-diction in which she engages, as she plays out the event, different aspects are brought into more or less clarity.

This means that that virtual and actual interact and complement each other, in that the virtual must be expressed in the actual, but the virtual inheres in and goes beyond the actual, forging connectivity and change across time and difference. Our response to the situation at play must therefore refer firstly to that situation, not a set of rules. Counter-actualisation is the capturing of the virtual and expressing it as what is unique to the socio-historical terrain in which it is played out. What is required is an experimental moving of series that runs through all boundaries. It is a creative expression of not just the actual situation at hand but the virtualities which are expressed in the actual and are refigured in the event. Through figurations or conceptual personae we may open up or think differences, but this must be connected to the material life at hand. It is through the actor that we do this – and to return to Braidotti and Gatens' point above, the actor here is perhaps better thought of as a socially mediated body moving in space with other bodies.

This understanding allows us to refine the idea of the politics of the imperceptible discussed in the previous chapter. What is required is not simply a person who is not identifiable in identitarian or representational terms (if such a thing is possible), but an individual who is enmeshed within an encounter, connected to both the virtual flows and actual occurrences at play. This is a position of simultaneous presence and distance. We are determined by the situation that we counter-actualise, but we are not defined by it, nor must it necessarily constitute our identity. It bears repeating then, that there is no single expression of sexuality, only flows of desire that interact and are expressed in a multiplicity of forms and are coded more or less directly according to the social strata in which we find ourselves. Each counter-actualisation is an expression of the questions and problems posed by the movement of the virtual objects and actual happenings with which 'sexuality' reverberates as it surrounds and orients bodies, capturing particular crystallisations and formulations alongside larger virtual fluxes of connection, desire, belonging etc., each of which is expressed at a greater or lesser level of intensity in a variety of different combinations and levels of memory. Moreover, new resonances and reverberations, connections and flows bring new problems that require new counter-actualisations and responses constantly to the fore. Thus, the most significant feature of what is being addressed here is not fixity but change, flow, connection and the spaces in between.

This then is a politics that takes place both above and below the level of law and subject. Counter-actualisation occurs in relation to problems and events, but crucially works as a



repetition of the pre-individual, creating new connections and possibilities, rather than a simple opposition or mimicry of enunciated identities. As such, Colebrook notes that:

‘We could see marriage in its current bourgeois normative and heterosexual form as the solution to a certain problem or question: how the self forms its gender, manages its desires and property, and organises its child-rearing. But the queer self would repeat the problems that compose the self: counter actualising it in the present by drawing on the pure past of the questions from which we have emerged. How might a self desire, what might count as an object of one’s desire, what relations or events might the couplings of bodies produce and enable?’<sup>72</sup>

Problems and practices can therefore be interrogated according to the potential and positivity of situated encounters<sup>73</sup>: what relations are established? What openings are detectable? What connections are being made and how can they be thought outside the restrictions of habit and recognition?

It is at the ‘fault lines’ of an ethical situation that these questions resonate most strongly. I would suggest that this is also the point when it is most vital to widen one’s analysis to the ‘intensities pulsing through a person’ who is to be understood as the actualisation of pre-individual singularities.<sup>74</sup> It is also at these fault lines that we are most exposed to the complexity of the power relations that we are subject to in relation to corporeal and incorporeal events. Thus as Braidotti, Colebrook and Hanafin argue, corporeal events (such as the state restriction of access to abortion) can produce incorporeal change (a woman becomes a mother). The designation of motherhood is not just a bodily change but dependent upon particular relations and actualisations relating to gender roles, motherhood, and the bourgeois heteronormative family.<sup>75</sup> Virtual relations encompass and change the bodies in which they find actualisation. I am suggesting then, that at moments of conflict, at times when attentive judgment is most relevant, it is possible to partially locate and interact with the complexity of the virtual multiplicity that resonates in response to the problem at hand.

Thus, to return to the question of rights, we might argue that the response to the situation that rights cannot name must be not an immediate attempt to find the rights which best fit the situation at hand (right to privacy, anti-discrimination, etc.) but an attempt at immersion – an exploration of the intensities that are actualised, the connections and connectives that resonate

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<sup>72</sup> Claire Colebrook, "On the Very Possibility of Queer Theory," in *Deleuze and Queer Theory*, ed. Chrysanthi Nigianni and Merl Storr (Edinburgh: Edinburgh University Press, 2009). p20

<sup>73</sup> Ibid. p21

<sup>74</sup> John Protevi, "The Terri Shiavo Case: Biopolitics, Biopower and Privacy as Singularity," in *Deleuze and Law: Forensic Futures*, ed. Rosi Braidotti, Claire Colebrook, and Patrick Hanafin (Basingstoke: Macmillan, 2009). p71

<sup>75</sup> Rosi Braidotti, Claire Colebrook, and Patrick Hanafin, "Introduction: Deleuze and Law - Forensic Futures," in *Deleuze and Law: Forensic Futures*, ed. Rosi Braidotti, Claire Colebrook, and Patrick Hanafin (Basingstoke: Macmillan, 2009). p3

at a particular moment and in a particular place. The law here offers not a transcendent resolution in which we can subsume our claims but an immanent tool through which we can open up the situation at hand and perhaps the law itself. Indeed in this vein, Deleuze highlights the importance of jurisprudence and the way in which it works by advancing from singularities. The law is territorialising, but there remain gaps through which questions emerge. What exists is a tension, and as Hanafin argues –

‘What is at stake in this very tension, to paraphrase Deleuze, is not the ritual application of human rights principles but the possibility of ‘inventing jurisprudences’. As Deleuze observes, ‘There are no human rights, there is life, and there are life rights. . . . That’s what being on the left is about. It’s creating the right’ (Deleuze, 1996, p. 40).’<sup>76</sup>

Or as Lefebvre suggests –

‘... legal scholarship must maintain an appreciation for the growth and becoming of law – which proceeds from particular situations and cases unfamiliar with later ordering principles and generalisations – without subjecting these to a scheme of ends or final causes. An awareness of the becoming of law makes us sensitive to the new in law’<sup>77</sup>

Lefebvre’s analysis rests on the idea that ‘[w]ith a difficult case it becomes clear that neither rule nor situation can intelligibly be said to exist outside the context of mutual encounter.’<sup>78</sup> Rights code bodies and flows and we perceive the way in which they do this most acutely at the moments in which this coding is imperfect: ‘only in an extraordinary ethical situation, living along the fault line between organic – bare – life and personhood, does one feel the intensities pulsing through a person and revealing the impersonal individuations and pre-individual singularities that the person actualises.’<sup>79</sup> It is in these awkward bodies, the monstrous figurations and the places where the law cannot go, or has not yet gone, that there is the need for attentive judgment as actualisation of virtual memory and the repetition of a new, complex multiplicity. At this point, what is required is not simply the enunciation of another law or right, but an exploration and questioning of the lines of a particular assemblage in order to ascertain what connections are in place, what connections are needed, what wider scopes law connects to, which narratives and histories are most strongly activated and why this might be. In this articulation, rights are immanent, double sided tools. In actuality, they are that which make us pause, stutter and seek to re-connect. In the movement of the virtual, law acts as memory that

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<sup>76</sup> Patrick Hanafin, "Rights of Passage: Law and the Biopolitics of Dying," in *Deleuze and Law: Forensic Futures*, ed. Rosi Braidotti, Claire Colebrook, and Patrick Hanafin (Basingstoke: Palgrave Macmillan, 2009). p55

<sup>77</sup> Alexandre Lefebvre, "The Time of Law: Evolution in Holmes and Bergson," in *Deleuze and Law: Forensic Futures*, ed. Rosi Braidotti, Claire Colebrook, and Patrick Hanafin (Basingstoke: Palgrave Macmillan, 2009). p36

<sup>78</sup> Alexandre Lefebvre, *The Image of Law: Deleuze, Bergson, Spinoza* (Stanford: Stanford University Press 2008). p216

<sup>79</sup> Protevi, "The Terri Shiavo Case: Biopolitics, Biopower and Privacy as Singularity." p71

is rotated and actualised according to the demands of the actual. Rights are one mode through which we perceive the situation in order to repeat anew.

Lefebvre stresses that judges – his mode of approaching attentive judgment – must exercise caution in their actualisations of virtual memory: ‘the call to prudence is found in several chapters of *A Thousand Plateaus* (most notably the political ones), where experimentation risks turning into alternative twin terrors; either toward fascism and the dangerous self-assurance of "marginals" (TP 227-229), or toward a morbid abolition, a line of death (TP, 160-161, 229-231, 250, 270).’<sup>80</sup> Creativity and experimentation must be approached carefully as the line of flight does not guarantee a better outcome, just a different one. While Lefebvre’s caution is justified, it is most interesting if we read the need for judicial prudence in relation to a politics of location. Judge and (for example) activist, are differently situated (as are activists connected to powerful NGOs in comparison to those working for small organisations with little access to frameworks of law and governance). These different locations impact upon the way in which justice and injustice, law and rights are perceived at each instance – even if the situation through which they are being perceived is exactly the same, the plane of law that is actualised differs radically depending upon how the actor is situated in relation to an occurrence. This interpretation is further complicated if we recall here that the actor here is the actualised body moving within a social space that mediates the way in which ideas and experiences can be approached or perceived. Different locations allow different perceptions and actualisations as well as a more or less restricted freedom of action. Our responsibility, I would suggest, is to make as many connections as possible – to view rights not as a monolithic body that can be applied if the ‘right’ enunciation of rights and law is found, but as a tool that can make various different connections and set in resonance multiple different series. The conceptual persona finds a reflection in the actor worthy of the event, who leaps into virtual memory and actualises monstrosity. The actor moves or emplaces herself where the law has not yet been, creatively actualising the virtual memory of law into new formulations and articulations.

The operation of attentive judgment speaks directly to questions of space and location. Rights here might be viewed not as an abstract discourse, but as an immanent operation of power, memory and movement resulting in multiple connections and missed connections. Thus, rights become a question of space or the distribution of bodies in space. There are several interrelated points to be unpicked here. The first concerns the operation of rights in relation to both the distribution and relationality of corporeal bodies in space. Rights-as-machines function as a mode or a diagram of distribution, connection, and distancing. Thus rights are a framework of emplacing and spacing; however rights in their ‘attentive’ form entail a constant movement and

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<sup>80</sup> Lefebvre, *The Image of Law: Deleuze, Bergson, Spinoza*. p238

reorientation in the face of new encounters and problematics. This is a movement that shifts not just the framework of rights, but the distribution and relations of bodies in space, with each actualisation reorienting the shape and connections of the whole. This brings us to the second issue: that of the question of the multiple and different bodies that move in space. Each body actualises rights in a singular particularity and more significantly for the argument here, *'each position is necessarily occupied by one person, where each body can only stand where other bodies do not.'*<sup>81</sup> If, as I have argued, rights play a role of machinic distribution – if we think of rights as process rather than fact, the point of conflict occurs when the process of distribution contends with the impossibility of simultaneous emplacement. This can in part be read as a paradox of the universal and particular in law: rights make a claim to a universal relevance and distribution, yet they are unequally embodied, experienced and actualised dependent upon context. If the universality of rights can only be expressed in the particularity of each body, which itself exists in relation with other bodies in space, one way to conceive of the encounter, in relation to an immanent understanding of rights, might be that moment at which, actualised bodies or haecceities (in whatever form this actualisation might take), embodying particular rights, contest a location – whether that location be geographical<sup>82</sup> (the right to occupy land or a street), political (a citizen body), social (a bar, public transport etc.), physical, or a combination of all of these.

It is important not to move too quickly to try to respond to this apparent impasse. By viewing rights as a process of spatialisation, we open up the law to uncertainty. This approach demands that we view the law through the particularities of bodies as singularities circulating in space with other bodies in a process of simultaneous (and sometimes conflictual) emplacement and withdrawal. As such, I am suggesting not a closing down or short circuiting of rights or law, but a process of calling rights' certainties into question, and in doing so, opening up rights to new connections, orientations and replays of virtualities.

What is required here is an openness to the possibility of radical potential and creative destruction. To read this point in the context of the connectedness of individuals and individual bodies highlights the way in which an understanding as self or subject as socially embedded must be complemented by an understanding that this embeddedness exists *with others* whose experience and actualisation varies from our own. To return to Gatens' point, what is required is both a radical openness and an emplacement within a sociality that includes not only immediate location but also global locatedness in both an actual and virtual sense. Human

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<sup>81</sup> Andreas Philippopoulos-Mihalopoulos, "Law's Spatial Turn: Geography, Justice and a Certain Fear of Space," *Law, Culture and the Humanities* 7, no. 2 (2010). p198

<sup>82</sup> Ibid.

beings belong to 'a complex multiplicity of potentially conflicting communities.'<sup>83</sup> Thus, while we are differently emplaced, we are also connected on the level of the pure past:

'Each present, each life, is connected to all others but to greater and lesser degrees of contraction. The way in which any life presupposes all the past brings very different lives together, against the Aristotelian desire to categorise lives...This does not mean that the actual lives of pigs and philosophers must have causal effects on one another - though, of course, they may. It means that, despite the absence of such actual connections, there will necessarily be connections on the level of the pure past and, through that change, they may be related to the point where we may say that one can replay another or touch another past in similar ways.'<sup>84</sup>

Differential locations and connections across the pure past shift the frame in which rights can operate. If rights are Deleuzian machines that connect and arrange flows, the best and most challenging use of rights at the moment of the encounter is one that forges multiple connections in relation to the location and micro histories at hand, rather than one that imposes an artificial clarity upon the encounter with reference to an already established framework. Of interest are points of shared resonance or intensity, new movements and openings, new emplacements that can be embodied but not (yet) articulated in law.

In this orientation, the human is defined by conatus or potential for action and by connectability/sociability, and thus Braidotti argues, the social and political are inbuilt human capacities. Socio-political factors are inherent to the structure of subjectivity.<sup>85</sup> It is this way that we move away from the disembodied subject, towards what Hanafin, following Cavarero calls 'the *who*' of 'actually existing human beings who come into being via a web of relations and socio symbolic ties.'<sup>86</sup> My argument therefore, is that a radical openness to the problems of law and identity for self and others moves us towards a connection across difference that may not solve the inherent contradiction of law and sexuality, but may move towards their reorientation. Further, this radical openness must be to the otherness of other individuals, but also to the non-human or infra-human. Particularly significant for the politics of gay rights, I would argue, is a sensitivity to movements in space and time – or to chaos and chance. D'Emilio notes for example that leaps forward in gay rights gains 'cannot solely – or even primarily – be explained by the will, the grit, or the savvy of activists themselves. Rather, they are provoked by social or

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<sup>83</sup> Braidotti, *Transpositions*. p150

<sup>84</sup> Williams, *Gilles Deleuze's Difference and Repetition: A Critical Introduction and Guide*. 97-98

<sup>85</sup> Braidotti, *Transpositions*. p150

<sup>86</sup> Patrick Hanafin, "Refusing Disembodiment: Abortion and the Paradox of Reproductive Rights in Contemporary Italy," *Feminist Theory* 10, no. 2 (2009). p240, Hanafin, "Voicing Embodiment, Relating Difference: Towards a Relational Legal Subjectivity," *Australian Feminist Law Journal* 29 (2008). p83

political turmoil that creates new openings for change, or new motivations to act.’<sup>87</sup> Wider movements and flows, and our interactions with such currents are also necessary for political change. A situated knowledge involves the acknowledgement of that which is above and beyond us as individuals and an awareness of our incorporation into larger flows, which we might influence but not, ultimately, direct. This is what I read Flieger as arguing when she suggests that we must play the game wittily.<sup>88</sup> We cannot escape our social strata, but we can move with an awareness of what has brought this strata into being and what connections it facilitates. Away from the sphere of sexuality activism Connell cites Nandy, to argue that Gandhi exemplifies this form of resistance: in realising that he could not fight British colonial power on its own terms he instead ‘cracked the code of colonialism.’<sup>89</sup> Gandhi’s success, Connell argues, came from the exposure and delegitimisation of the colonial regime, through the pursuit of a mode of behaviour which both stepped outside the system, but functioned with a keen awareness of the system’s mode of operation.<sup>90</sup> Playing the game knowingly is to work both inside and outside – enmeshed in a particular situation, but aware of the virtual possibility for other articulations and actualisations that are possible through a repetition in the mode of the future.

This suggests that we can read neither injustice nor resistance as the simple application of a universal rule or law that designates particular behaviours as good or bad. Instead I am arguing for an opening up or spatialisation of rights that allows for the subversion of the logos of law as a single narrative or interpretation and instead views rights as an actualised virtuality. This allows for the entry of uncertainty into law:

‘This is what space brings to law. Space is not just the question ‘how would this judgment/legal text/legal act be formed over there?’, but significantly, ‘why is the judgment/legal text/legal act expected to be formed in this way here?’ The result is a law that keeps on questioning itself, not in eternal undecidability but in continuous acknowledgement of its own limitations: the law can only do that much, and even that is not certain. Space is law’s mirror on which the irresolvable paradox between its universality and particularity is thrown into relief. Spatiality is an ethical position.’<sup>91</sup>

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<sup>87</sup> John D’Emilio, “Cycles of Change, Questions of Strategy: The Gay and Lesbian Movement after Fifty Years,” in *The Politics of Gay Rights* ed. Craig A. Rimmerman, Kenneth D. Wald, and Clyde Wilcox (London: University of Chicago Press, 2000). p43

<sup>88</sup> Jerry Aline Flieger, “Becoming-Woman: Deleuze, Schreber and Molecular Identification,” in *Deleuze and Feminist Theory*, ed. Claire Colebrook and Ian Buchanan (Edinburgh: Edinburgh University Press, 2000). p62

<sup>89</sup> Raewyn Connell, *Southern Theory* (Polity, 2007). p186

<sup>90</sup> Ibid.

<sup>91</sup> Andreas Philippopoulos-Mihalopoulos, “Spatial Justice: Law and the Geography of Withdrawal,” *International Journal of Law in Context* 6, no. 3 (2010). p9

At issue then is questioning that leads to movement, or better oscillation – between striated (coded/knowable) and smooth (unknown, nomadic) space, between law and justice. Moreover, this movement recognises the complex interaction of the two. Rights are not necessarily one thing or the other, but instead are in a process of continually interrupting themselves. I would suggest that this is both an expression and a result of the paradoxical nature of rights' tendency to go in two directions at once. As Hanafin argues, 'law is vulnerable to the contradictions which lie at the heart of its discourse. Legal discourse reveals a space in which power and transgression are at play. It is these infinitesimal moments of interruption which expose the limits of legal discourse, which display fleetingly the law of another community not bound by law's word.'<sup>92</sup> Perhaps counter-intuitively when considered in relation to the role that law usually plays, this movement demands the possibility of a lack of certainty and orientation – an unutterability, or a 'legislative void'<sup>93</sup> that interrupts the totality of the legal whole. This lack of certainty however, is what emplaces or spatialises rights – it is what calls into question not only their operation, but also the position from which they operate. I would suggest that this holds true for the courts or legal chambers and for those who activate rights as a mode of resistance. If we return to the analysis of Pride above for example, a further spatialisation of the initial occupation of space subverts and reorients how we might think about rights, sexuality, class and race. We thus remain within a pendulum swing of questioning, expectation, possibility and withdrawal.

As such, I would suggest that law or activist practice that is unmediated by this movement in relation to uncertainty can give us only false expressions and false problems. The job of the activist or activist-lawyer is to attempt to counter-actualise in a way that reorients both self and world in order to address this injustice and in doing so to speak to an audience and an orientation that is thinkable, if not necessarily nameable. This is why conceptual personae/figurations are so important. As Burchill's analysis shows, figurations are that which are not caught within dominant frameworks of knowledge or understanding.<sup>94</sup> They are modes of creative selection and expression that bring dominant hegemonies into focus by exposing and subverting the terms, codes and constructions in which these hegemonic forms (of expression, law, discourse etc.) express themselves. However, just as conceptual personae are not the same as psycho-social types, the activist cannot *be* the figuration, but must instead think the figuration in order to explore particular relationships, changes and configurations within which she is enmeshed. This is significant because just as the conceptual personae and psycho-social

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<sup>92</sup> Patrick Hanafin, "The Writer's Refusal and Law's Malady," *Journal of Law and Society* 31, no. 1 (2004). p6

<sup>93</sup> Hanafin, "Refusing Disembodiment: Abortion and the Paradox of Reproductive Rights in Contemporary Italy," p239

<sup>94</sup> See Burchill, "Becoming-Woman: A Metamorphosis in the Present Relegating Repetition of Gendered Time to the Past.", also Braidotti, *Nomadic Subjects: Embodiment and Sexual Difference*. p75

type are implicated and overlap with one another, the activist cannot act outside the social conditions and matrix of social connections in which she inheres. What the figuration does do is allow a consideration of which modes of thinking, experimentation and actions subvert the hegemonic coding at play. Thus, the figuration offers a possible opening into a mode of action that, rather than posing as negative resistance to social structures in the terms already dictated and colonised by those same social structures, seeks creative resistance and experimentation that allows resistance as the production of new modes of thinking, being and saying. Of particular relevance here is Olkowski's argument that how we conceive of the world is absolutely relevant to how we live (in) it.<sup>95</sup> At issue is both the material existence and organisation of life and the concepts by which we understand life's existence and embodiment. Here we think not a disembodied universal Other but '*another*' through which we move 'from the universal to the unique.'<sup>96</sup> Thus resistance here takes place through creative material and conceptual production: through creating new concepts for the problems that we are faced with, through experimenting with modes of life rather than seeking one single or totalisable mode of being. My argument therefore, is that the failure of rights is an opening for this form of experimentation, figuration and creative production. We counter-actualise the questions that are posed by rights failures rather than being subsumed to the regime that rights help to maintain.<sup>97</sup> Practically speaking, what is of interest here is not an attempt to fit monstrous bodies into existing rights regimes, or even necessarily to expand rights regimes to encompass a limited amount of monstrosity. What is more interesting (although more unstable) is the use of figurations to embed and expose regimes, to situate the activist at the margins and blind spots and allow her to speak difference to a constituency that does not yet necessarily exist. The failure of rights should be seen as just that – as a failure or a limitation of the regime in which we find ourselves. By taking seriously this failure, two slightly different options are presented to us – either attempt to expand rights regimes in order to try to enfold and encompass new demands, or to actualise the regime anew, to reconfigure it on the plane of immanence to such an extent that the problem through which the failure was exposed, dissolves. At the very limit then, what we draw into question is not the activist or the non-heteronormative body, but the very regime that names them as such – and just as the activist and non-heteronormative body can be folded and perceived anew, so can the way in which we fold and perceive the very system in which they operate.

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<sup>95</sup> Dorothea Olkowski, *Gilles Deleuze and the Ruin of Representation* (Berkeley: University of California Press, 1999). p104

<sup>96</sup> Patrick Hanafin, "Voicing Embodiment, Relating Difference: Towards a Relational Legal Subjectivity,". p87

<sup>97</sup> Ibid.



### **The 'successful failure' of rights as the possibility of extra-representational community and disjunctive connection**

A key issue here is the question of connectedness across difference and action in radical disunity and disjunction. The nature of connectedness or community however, is highly complex. In discussing these issues, Halberstam uses Nancy's notion of 'lost' community to highlight the way in which 'quests for community are always nostalgic attempts to return to some fantasized moment of union and unity' revealing the 'conservative stakes in community for all kind of political projects, and mak[ing] the reconsideration of subcultures all the more urgent.'<sup>98</sup> Considerable anxiety can surround the political project of community construction – at stake are questions of totality, legitimacy and purity. Furthermore, I would suggest that these factors are only exacerbated by a political context that includes a recent transition (to a new form of rule for example<sup>99</sup>) or, as in the context of emergent sexual rights, the potential for the subversion of or challenge to particular operations of power or identity (this dynamic is discussed in Chapter Three). The stabilising role of the law is particularly significant here as the law 'creates the textual illusion of a community founded on a being in common.'<sup>100</sup> The law helps to secure an 'invisible bond' – an identity as a (member of a) community. As I have suggested throughout this thesis however, to claim a communal purity is to 'throw a cloak' over deeper difference. This tension is evident in both the actions of gay rights groups and in the arguments of those who oppose them on the grounds of culture or tradition.

Two broad themes are at play here; the first is the idea of a particular totalising essence that can be achieved through a particular teleological journey to a specified utopian endpoint. The second is the contrasting idea of a mystical 'lost' totality which once existed but is now gone and should be mourned or recovered. Community in these iterations tells us what we are, what we should be, or what we were. And it speaks authoritatively in terms of 'we' – community in this framework is transcendental and central to our identity - it tells us who we are and how we should act. However, both of these totalising narratives are a myth. Nothing has been lost, nothing is lost. No form of rights, law or activism will allow a recovery or expression of a supposed unity, indeed, on the contrary it will form only a new expression which will contain within it the potential for once again being opened up and expressed anew as the law as a machine of striation interrupts itself in its 'alter ego'<sup>101</sup> as a machine of deterritorialisation. 'We alone are lost, we upon whom the "social bond" (relations, communication), our own invention, now descends heavily like the net of an economic, technical, political and cultural snare.

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<sup>98</sup> Halberstam, *In a Queer Time and Place: Transgender Bodies, Subcultural Lives* p153

<sup>99</sup> See eg Patrick Hanafin, "D(en)Ying Narratives: Death, Identity and the Body Politic," *Legal Studies* 20 (2000).p396

<sup>100</sup> Hanafin, "The Writer's Refusal and Law's Malady."p9

<sup>101</sup> Ibid. p7

Entangled in its meshes, we have wrung for ourselves the phantasms of the lost community.'<sup>102</sup> If we begin from representations, names and identities we start in the wrong place. The point is not to make the situation encountered fit within some already conceived narrative of community, citizenship or state, but to open up what is new, the resonances, lines of flight and expressions of intensities in their different forms. Law and community here are not a map for action but one actualisation that can be played again.

Disunity then, is not necessarily something to be feared: 'Viewed spatially, the poststructuralist subject may appear as fragmented and disunited; on a temporal scale, however, its unity is that of a continuing power to synchronize its recollections. This creates a continuity of disconnected fragments: a discontinuous sense of time.'<sup>103</sup> In this sense, if we look to events or encounters, and to those moments that have shaped us as a community, we can acknowledge the event as becoming, but at the same time reject any definitive interpretation of it. So, for example, the event of Stonewall and the reverberations of Pride will be returned to, encountered and engaged with very differently as we return to these events from different spaces and places. The differently located person and community will have a different threshold of perception and engage differently with a moment, perhaps finding new and unactualised virtualities that were previously overlooked.

Thus the event might be seen as a complex 'archive'<sup>104</sup> of feeling, affect and history. An understanding of politics from this perspective demands that we try to unpick such histories rather than simply reacting along old, repetitive lines. Manalansan suggests that we need to be aware of the 'shadows of stonewall'<sup>105</sup> or to escape the 'stupor' of single-issue politics.<sup>106</sup> In essence, perhaps we need to force ourselves to pause and stutter as part of our political action in order to attempt to address sexuality in all of its tangled complexity.

Inherent to this form of analysis is the idea that sexual rights *alone* are, and will never be sufficient. In conjunction with this is the problem that many critiques of rights are entirely accurate.<sup>107</sup> Even more worryingly, arguments against the internationalisation of sexuality rights raise key and significant points.<sup>108</sup> However, I would argue that such arguments and

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<sup>102</sup> Jean-Luc Nancy, *The Inoperative Community* (Minneapolis: University of Minnesota, 2004). p12

<sup>103</sup> Braidotti, *Transpositions*. p150

<sup>104</sup> Halberstam, *In a Queer Time and Place: Transgender Bodies, Subcultural Lives* p24

<sup>105</sup> Martin F. Manalansan IV, "In the Shadows of Stonewall: Examining Gay Transnational Politics and the Diasporic Dilemma," *GLQ* 2 (1995).

<sup>106</sup> Manalansan, "Race, Violence, and Neoliberal Spatial Politics in the Global City," *Social Text* 84-85 23, no. 3-4 (2005). p153

<sup>107</sup> See eg Kneen, *The Tyranny of Rights*.

<sup>108</sup> I am thinking here of arguments made *against* sexual rights recognition in the UN, or those who queried the effect of the Toonen decision in Tasmania.

debates remain trapped within restrictive, representational paradigms.<sup>109</sup> Or to paraphrase Ahmed, the orientations, the patterns of directionality towards sexuality and rights (which are treated in this paradigm as objects rather than flows) put some things into perspective while neglecting others. Current debates and more particularly, deadlocks, in international politics owe something, I would suggest, to particular repetitions of particular histories of thinking and viewing rights and sexuality.

Rahul Rao's analysis of Massad's *Desiring Arabs* engages with some of these issues. Rao balances a critique of the hierarchising actions and language of LGBT international movements against a critical analysis of Massad's argument that such actions and language are entirely false and out of place in the Arab world. He notes that –

‘Rather than treating the question of motivation as an empirical one, Massad has in effect decided that coming out as gay in the Arab world is less about wanting to live in truth and more akin to buying the latest Calvin Klein underwear. While openly gay Arabs in the Middle East may be few in number, their characterisation as faddish and traitorous amounts to a transhistorical normative claim about how Arabs ought to express non-heteronormative preferences. In effect, in criticising cosmopolitan rescue politics and its local interlocutors, Massad slips into a reinforcement of communitarian authenticity narratives that police how sexual preferences ought to be expressed.’<sup>110</sup>

What is interesting here is the way in which a critique (made by Massad) of transhistorical, normative, universalising claims, becomes in itself a transhistorical universalising claim that is not sensitive to the agency of the actors involved or the complex and shifting conditions that enable and limit the operation of this agency. My reading of Rao's critique is that arguments like those put forward by Massad, or equally by liberationist LGBT groups, fail to transcend the limits of representational politics and fail to acknowledge the complex histories at play or to situate their arguments within the particularities of material embodiment. The more complex and difficult, although perhaps more fruitful approach must be to attempt to ‘crack’ this representation, to commit to unpicking issues as they arise in light of an acknowledgement of the discourses of power at play while embedding self and others in a politics of location. To put it differently, we must seek to extract from a location, particular issues and modes but to attempt to think these trends and differences outside the stricture of one single normative or historical narrative.

Rao concludes by noting that:

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<sup>109</sup> Olkowski, *Gilles Deleuze and the Ruin of Representation*. p91

<sup>110</sup> Rahul Rao, *Third World Protest* (Oxford: Oxford University Press, 2010). p177

‘At least three sorts of responses are possible when one is confronted with polarities. First, one might choose to occupy one of these polarities and defend one’s position accordingly. Second, one might seek some sort of Hegelian synthesis between these polarities, a middle path, a third way. Third, one might seek to hold these polarities in tension with one another, using each to provide critical perspective on the other but recognizing the kernel of truth in both.’<sup>111</sup>

It is in this third approach, Rao’s analysis suggests a Deleuzian paradox: the holding of series in tension without subsuming them to representation or to one particular historical narrative. There is an attempt here to go in both directions at once, recognising connection despite difference: connection that is not pre-ordained but produced. Thus, gay rights politics does not exist in its particular forms because it is pre-given or certain but is instead a result of particular selections – some of which result from the actions of agents, some of which indicate the resonance of larger historical narratives, forces and laws. The expression of sexuality finds stability in particular ways, in particular places, at particular times. Different critical approaches, Rao reminds us, provide different critical perspectives and different positions from which we might leap back into virtual memory – what matters is where we start from, and the recognition that this starting point will always already be in the middle. Thus, we might argue with Halberstam that ‘justice in the end lies in the unraveling of the crime, not simply in its solutions, and when we cease to unravel we become collaborators.’<sup>112</sup> The expression, or the failure of expression of injustice is not a beginning – it is already a midpoint. The task at hand is to unravel the complex assemblage that surrounds the ‘crime’ including the structures that have made possible the form of its articulation.

This means that we must commit to an unraveling of ‘crimes’ or perceived injustices, both towards and beyond the limits of codified law and rights. As Rao suggests, there is a tension here – a tension that an activist must take on and embody in the pursuit of transitory justices. Rights do not give us the answer, nor do discourses of sexuality – both are temporary actualisations of larger virtualities which we use in particular spaces in pursuit of new actualisations and ways of being together in common. Or, to put the issue more succinctly, the question of sexual orientation and rights is a Deleuzian problem: it carries a virtual side that is repeated anew with new solutions in the actual. It is not something that can be ended, but only opened up once more. This is an extremely awkward position to occupy, but to deny such tensions would, we might argue with Halberstam, constitute an injustice.

This means that there is no simple answer to the question of how we should do rights politics or what position sexual orientation might occupy in international human rights law. Rights are not

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<sup>111</sup> Ibid. p201

<sup>112</sup> Halberstam, *In a Queer Time and Place: Transgender Bodies, Subcultural Lives* p46

the solution, but they do offer one way of opening up questions of sexual belonging, subjectivity, relationships, and connectivity. I would suggest that the moment when rights fail to speak to perceived injustices can be read as the moment of radical openness. This is the point at which we might become worthy of the event and move through smooth space, defined not by already existing cartographies but by new distributions and new becomings. However, it might also be the moment at which we decide that the demands of the event, the demands of creative experimentation, are 'too much' and fall back into the already existing strictures of the social machine of which we are part, following along and thus reinforcing an already established mode of action. To be worthy of the event is to counter-actualise it: to play it differently in different series, while expressing the Idea as a particularity. This is not an easy task, nor is it necessarily a guarantee of something better. It is little wonder then, that the safer option might be to stick to already established pathways, to move within the parameters that are already set out, slowly changing them as we do. And while we can point to the achievements of such molar politics, we can also identify the limits of an approach that remains trapped in binaries of identities and can ultimately work to reinforce unjust structures.

Thus we might conclude that the failure of human rights to enunciate injustices experienced by non-heteronormative individuals becomes not an ending but a demand – it offers a means of illuminating the wider terrain in which rights operate. As such, a successful failure might bring not a programme for action but a programme of branching out around particular actions, overturning blocks and binaries. Playing the game wittily involves the making of new connections and new perceptions, new modes of speaking, acting and expressing for an audience that does not yet exist. A successful failure sees the opening out of a paradox into the disjunctive connections of an open politics.

## Chapter Seven - Conclusion

The intersection of sexual orientation and rights represents and exposes a number of challenges and complexities. An engagement with these challenges brings into question both the theoretical and historical foundations of rights, the nature of subjectivity and community through which these rights demands are increasingly made, and the political, legal and social structures and framework of knowledge by which we understand these demands. Yet despite these complexities, the resonance between sexual orientation/sexuality and rights and the articulation of the concerns of LGBT individuals in terms recognisable to rights discourses and instruments appears to be increasing rather than decreasing. I have argued however, that the increased affinity between rights language and sexual orientation remains something of a double edged sword: rights are a powerful discourse for the articulation of claims to justice, but they also operate as a machine of capture, striation and coding. The complex, multifaceted nature of sexuality, desire, community and power cannot adequately be captured in static articulations of sexual rights. This means that while rights may grant LGBT individuals a voice, they place a heavy restriction on the language that can be used to speak.

Thus, despite the gains that have been made and without disparaging the work of those who have helped to realise these advances, we must also be aware of the real problems that occur in the intersection of sexuality and rights. These problems are shifting and context-dependent, but key themes that have emerged throughout this thesis include: the fault-lines and theoretical instabilities of rights regimes that are exposed in debates surrounding the relationship between sexuality and cultural authenticity at the UN and elsewhere; the tendency towards the adoption of overcoding and unresponsive 'identities' as a base from which to campaign and the unanticipated and exclusionary consequences of this; and more broadly, the tendency for rights to act as a transcendental or abstract set of rules into which material circumstances are subsumed, thus silencing the particularities and singularities of each material instant or encounter. These problems do not represent a totality (positive or negative) of the intersection of sexuality and rights, nor are they expressed in the same way in different times or locations. They do however, give some indication of the diversity of circumstances within which questions of sexuality can resonate and therefore the complexity of the challenge at hand.

My aim has been to engage with some of these problems as actual occurrences and as virtual/theoretical movements. I have attempted to move from actual instances of conflict (encounters) to a discussion of both the virtual intensities and objects that might be in operation and the theoretical complexities that this exposes in rights regimes. Thus, at these fault lines - the problematic encounters between rights and sexuality - rather than trying to

construct one definitive answer or set of rules, I have found it useful to instead attempt to both situate and depersonalise the 'problem' and in doing so attempt to look for the virtual objects in operation, the connections that are being made between different regimes, identities and groupings and the factors that have made these connections possible. Such an approach exposes very clearly the temporality of our rights constructions: 'human rights' as an idea may endure, but the way in which we enfold, enunciate and embody both rights and 'humanity' is fluid and contingent. The danger is that we do not recognise this to be the case.

With this understanding, we can return to the actual side of rights – the material embodiment of a particular situation of injustice. If we view rights as always double sided – or as always only expressing a small part of virtuality, or one actualisation of the pure past – we can comprehend rights not as abstract rules, but as immanent tools. This view facilitates a shift in focus from a question of which right has been violated, to an exploration of which connections are provoked by our use of rights in a particular situation. What does their activation make possible, and more significantly, when pushed to their limits and when used creatively, what are rights capable of doing? This approach involves a focus on the actual – the material problems that occur at the intersection of sexuality and rights – that moves to the virtual, but maintains a mutual interaction between the two that requires an exploration of the specific difficulties at hand, rather than an assumption that an abstract rights violation is necessarily the 'right answer' to the difficulties posed. On the other hand, it is often the case that at present, rights are what we have to work with – they form a powerful language for the expression of injustice and as such, theoretical and foundational difficulties aside, they cannot simply be ignored. We might conclude therefore, that in making claims in relation to sexual orientation, we cannot abandon rights language, but we can be careful about how we speak – it is a language that we must use knowingly (wittily) – informed by the interplay between the virtual and the actual and the way in which rights form a surface of meaning and interaction between the two.

Thus, in focusing on context and connections, we can view rights as Deleuzian machines. As such, rights can be understood as facilitators of connection, maps and pathways that work to code and channel flows. They engage in a process of breaking down and building up our social machines and in this way, rights become part of a framework of stratification through which we can articulate what is possible, what is impossible and how we might act in relation to these conditions of possibility. Thus rights are, in one articulation at least, a device of coding and of power.

This thesis has explored a number of the problems that arise when rights operate as a device of striation or coding. It is when rights aid or facilitate the operation of a structure of fixed

identities that attach to the individual subject that they are perhaps at their most dangerous and least useful. Furthermore, this iteration of rights seems to demand increasingly specific articulations (current classifications of non-heterosexual 'identities' give a good indication of this trend – what was once 'gay' becomes 'LGB', then 'LGBT', then 'LGBTQQI' and so on). It is in this way that rights can begin to function at the level of the biopolitical, in that the flows that rights work to direct and connect relate not just to the individual but to the extra or infra-individual – to questions of life, death and necropolitics.<sup>1</sup> Braidotti calls these extra-individual concerns 'zoe-centred' subjectivity, based not on hierarchical bios – that is human centred, discursive and intelligent subjectivity – but on the self as a moving and moveable assemblage.<sup>2</sup> However, she also warns that a 'multi-layered subject is no guarantee that molar power formations have been de-territorialized: a change of scale may not be a qualitative shift.'<sup>3</sup> The danger then, is that rights remain trapped within frameworks of a unified, singular, rights bearing subject (or indeed a multi-layered, yet still unitary subject) that cannot comprehend a non-unitary, unstable, embedded subjectivity, that exists through 'an enlarged sense of inter-connection between self and others'<sup>4</sup> and continually tries to re-draw stark classifications in which rights are always a zero-sum game in relation to questions of life, death and sexuality.

Ironically then, and despite their historical association with the unitary subject, we can trace a mutation of rights that increasingly works through this biopolitical mode and classification of life. In the light of these pressures, it is unsurprising that we can identify moments at which rights fail; these are the moments in which rights cannot accurately perceive or articulate a particular situation as an injustice. I have argued that this moment of failure is a moment of fracture – a moment of the encounter – it is also the point at which there is a possibility for creative experimentation with the forces and singularities at play and the possibility of the actualisation of the pure past, which is selected and rotated into a particular plane, in response to the demands of the future.

Thus, the encounter facilitates an exploration of the connections and virtual potentials that inhere in any particular material moment. The encounter demands that we attempt to explore minor avenues and speak minor languages against the habitual paths of rights and speech. Ironically, while rights can be used as a language of codification and striation, their failure to

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<sup>1</sup> See for example Patrick Hanafin, "Rights of Passage: Law and the Biopolitics of Dying," in *Deleuze and Law: Forensic Futures*, ed. Rosi Braidotti, Claire Colebrook, and Patrick Hanafin (Basingstoke: Palgrave Macmillan, 2009). John Protevi, "The Terri Shiavo Case: Biopolitics, Biopower and Privacy as Singularity," in *Deleuze and Law: Forensic Futures*, ed. Rosi Braidotti, Claire Colebrook, and Patrick Hanafin (Basingstoke: Macmillan, 2009). Rosi Braidotti, "Locating Deleuze's Eco-Philosophy between Bio/Zoe-Power and Necro-Politics," in *Deleuze and Law: Forensic Futures*, ed. Rosi Braidotti, Claire Colebrook, and Patrick Hanafin (Basingstoke: Palgrave Macmillan, 2009).

<sup>2</sup> Rosi Braidotti, "Affirming the Affirmative: On Nomadic Affectivity," *Rhizomes* 11/12 (2005).

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.



'speak' points to the potential for the articulation of a minor language or a movement of deterritorialisation.

The question of habitual languages is particularly relevant to the issue of problematic binaries through which gay rights politics are increasingly conducted. Whether these binaries are North/South, culture/rights, civilised/uncivilised or some other combination, they all rest on a permanent and foundational form of identity and contradiction. This mode of thinking expedites the performance of both law and politics, but by positing fixed identities, it is necessarily exclusionary and insensitive to the complexities that tend to mark questions of sexuality and rights. I would argue – with Deleuze – that part of escaping these binaries is through the abandoning of negativity and contradiction as a basis for identity. The individual is instead a haecceity<sup>5</sup>, the subject is a spatio-temporal compound which frames (and perhaps is framed by) the boundaries and processes of becoming<sup>6</sup> and our individual selfhoods and identities are formed through the enfolding, repetition and grouping of particular impressions.<sup>7</sup> We are thus located within, and form part of, the environment that we occupy, we cannot be read as abstract individuals outside the multiple dimensions that make up this environment.

This approach demands an identity that is based on location, connections, production and action. Human beings are defined by their conatus – their connection and being-with-others.<sup>8</sup> Subjectivity and self is open ended and differently selected and contracted according to location and circumstance. Unlike an approach that begins in a negative, abstract binary, this conceptualisation of the person is much less stable, but it also allows for the recognition of that which remains free and moving outside identitarian categorisations, the excess or the code that always escapes and mutates, or the line of flight.

I have suggested that sexuality, as we currently understand it, always contains this element of excess, of uncoded flow and of the movement of desire between and around bodies. In doing so, sexuality brings different bodies into contact and different series into resonance in multiple different ways. This is why Deleuze and Guattari insist that there can be no gay liberation movement when the movement views itself in a negative and equal relationship with heterosexuality. Homosexuality and heterosexuality, as oppositions, define themselves through a negative relationship with each other. However, this relationship assumes a fundamental sameness on each side of the binary – each is not the other, but there are grounds upon which they are comparable. I would argue that this assumption of sameness is problematic and leads

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<sup>5</sup> Gilles Deleuze and Félix Guattari, *A Thousand Plateaus*, trans. B Massumi (London: Continuum, 2004). p289

<sup>6</sup> Rosi Braidotti, *Transpositions* (Cambridge: Polity, 2006). p163

<sup>7</sup> Dorothea Olkowski, *Gilles Deleuze and the Ruin of Representation* (Berkeley: University of California Press, 1999).

<sup>8</sup> Rosi Braidotti, *Metamorphoses: Towards a Materialist Theory of Becoming* (Cambridge: Polity Press, 2008). p100, Braidotti, *Transpositions*. p148-150

to the articulation of the issues faced by gay rights movements as false problems based in representations, rather than as expressions of multiplicity. Or, put more simply, the terms of identity and community are defined through a (negative/exclusionary) relationship with a 'centralised' heterosexuality, rather than through a productive engagement with what 'homosexuality' might mean, or more accurately, what position it might occupy and what connections it might make, when approached on its own terms. As such, the question is one of how homosexuality can be a rhizomatic productive assemblage rather than a contradictory identity – what movements would this understanding of homosexuality make, what orientations would it set in motion and how would it move and interact with bodies and selves. In this way, we can begin to move away from negativity and lack as a starting point for action and in doing so, distance ourselves from a community identity that is based in exclusion. This is not to say that a gay community or identity cannot or has not been built, but this identification is not automatic – it is a production or a series of different connections and selections, and must be recognised as such. Without this understanding, such community identities can become prone to false foundations, representations and exclusivity.

The question therefore becomes one of repositioning the binaries that striate discourses of rights and sexual orientation in such a way as to think them not as a relationship of contradiction between an identity and its negation, but as a particular folding of being and ?being, actual and virtual. Thinking identities only in the realm of the material, nameable and identifiable expresses only half the problem and in doing so it assumes sameness and negativity and closes down the potential for connection and creation. In this way, Conley argues that:

'Queering is not based on recognition in a dialectic. For Deleuze no homosexual subject clamours for rights. Rather, the 'new' homosexual affirms himself or herself by saying that no one *is* homosexual. Homosexuals are still being named as such by a majority in power but they are already elsewhere. There are only homosexual productions of desire and assemblages (*agencements*) that produce utterances (*enonces*).'<sup>9</sup>

Thus, resistance must, in some part involve the questioning and turning away from prescriptive linguistic forms – even those forms that find recognition in rights regimes.

This orientation towards rights and sexuality is complex. I have suggested that sexuality cannot be understood as one single thing, but must be viewed as a mode of expression that moves through and orients various different assemblages. Sexuality is an aleatory point or empty square that brings series into resonance but cannot be fixed into one particular series or

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<sup>9</sup> Verena Andermant Conley, "Thirty-Six Thousand Forms of Love: The Queering of Deleuze and Guattari," in *Deleuze and Queer Theory*, ed. Chrysanthi Nigianni and Merl Storr (Edinburgh: Edinburgh University Press, 2009).p28

location. As such, sexual rights, and sexual orientation rights become very difficult to express with any permanence. Sexuality (and by association sexual orientation) is problematic as it crosses a number of different discourses, assemblages and situations, yet the form of counter-actualised responses to sexuality or the problems precipitated by sexuality must always be different and embedded within the material – as a response to the actual rather than to an abstract or transcendental rule. Questions of sexuality connect through the event and across the pure past, but the form taken by actual responses must necessarily differ. Thus, I would suggest that the best way to approach questions of sexuality and rights is through questions of connectivity and production rather than adherence to a set of principles or rules.

I would argue that this process of creative connectivity against abstract universality is central to accessing the potential of the LGBT rights discourse. A key theme of this thesis has been the importance of the repetition of difference in relation to determinate material circumstances, rather than simply replaying already recognisable discourses of law, rights or identity. This approach centralises active judgement, creativity and the repetition of the future as opposed to the potentially restrictive, unthinking repetition of the past. At stake is the ethics of the uncertainty of law and its relation to the potential for creative transformation. The next step, it would seem, would be to apply this methodology and ethical outlook to matters of public policy. However, it is at exactly this point that I prefer to draw back (or perhaps creatively withdraw). There are two reasons for this, the first Deleuzian and the second grounded in a recent series of articles that were published in the journal *Feminist Theory* between 2005 and 2007.

The Deleuzian argument follows from the construction of a politics that sees the repetition of virtual tendencies in materially determined situations. What is important, as Nunes reminds us, is to pay attention to the minoritarian tendencies circulating through each set of circumstances. To impose an a priori form that is ‘filled’ by the virtual each time is to think transcendently.<sup>10</sup> This is not to say that the approach that I have been outlining throughout this thesis has no practical application. The point at hand is subtler: I am wary of imposing a form onto what the ‘repetition of the future’ might be. The task at hand is to replay the event as a counter-actualisation in response to material occurrences. Thus I would argue that the most useful approach to take at this point is to practice a politics of location that operates with a keen awareness in relation to the power dynamics and differentials within which we are situated, rather than risking imposing a unitary ‘new story’ of sexual rights policy and law. Throughout this thesis, I have explored various different ways in which the power differentials of enfolded

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<sup>10</sup> Rodrigo Nunes, "Politics in the Middle: For a Political Interpretation of Dualisms in Deleuze and Guattari," *Deleuze Studies* 4, Supplementary Issue: Deleuze and Political Activism (2010). p112-113

materiality might be constituted and the specific ways in which questions of LGBT rights interact with particular sets of circumstances.

My caution here can be outlined by reference to three particular articles in published in *Feminist Theory*.<sup>11</sup> In the first and third of these articles, Hemmings explores the act of 'telling feminist stories'. In doing so, she addresses the way in which certain authors become synonymous with particular trends and changes within what is assumed to be a relatively unitary or linear feminist history; and the way in which feminist theory and history *as it is currently understood* allows particular stories to flourish, while potentially closing other stories down.<sup>12</sup> Hemmings attempts to draw attention to the power dynamics of the feminist stories that we tell ourselves in order to more clearly uncover the multiple 'authors' and sources of these histories, the hidden narratives and the representations that work to overcode the potential for a multiplicitous (perhaps acentred) feminist history. In general, Hemmings approach is to examine the techniques of citation and knowledge production in relation to a feminist historiography, rather than suggesting potential sources for the outlining of an alternative history. This is deliberately done, with the intention of retaining a focus on the technologies of feminist storytelling over any kind of attempt to 'set the story straight'. However, Hemmings does include one footnote in her original article, where she suggests some alternative sources of feminist theory and history.<sup>13</sup> This footnote is later singled out as a mode by which Hemmings fails to stick to her own stated goal of examining knowledge production over producing revisionist history.<sup>14</sup> In response, Hemmings notes that:

'I wish now that I had not included this note, except insofar as it enables me to restate my historiographic commitment more strongly here: *I am absolutely convinced that the proposing of a singular feminist history as fact requires the erasure of its contested authorization.* This is why I seek to intervene at the level of means of authorization of dominant versions of that history, to highlight the politics that produce and sustain those versions as facts. To correct the story in a linear fashion – that is from past to present – will produce a different history that will also erase its own construction (and the stranded note could be read as a hyper-representation of this erasure), and produce a de facto subject of authority for feminist theory –

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<sup>11</sup> Clare Hemmings, "Telling Feminist Stories" *Feminist Theory* 6 (2005); Rachel Torr, "What's wrong with aspiring to find out what really happened in academic feminism's recent past?: Response to Clare Hemmings' 'Telling feminist stories'" *Feminist Theory* 8 (2007); Clare Hemmings, "What is a feminist theorist responsible for? Response to Rachel Torr" *Feminist Theory* 8 (2007)

<sup>12</sup> Hemmings, "Telling Feminist Stories"

<sup>13</sup> Ibid. p132 n7

<sup>14</sup> Torr, "What's wrong with aspiring to find out what really happened in academic feminism's recent past?: Response to Clare Hemmings' 'Telling feminist stories'" p61

the author, or the represented, or both. Which authors should we choose? Who will tell this story?’<sup>15</sup>

My own approach differs from that of Hemmings in both my explicit adoption of a Deleuzian/Braidottian framework and in the fact that I attempt to trace the infusion of particular stories and historiographies into activist and legal arenas rather than focusing solely on academic texts. However, I would argue that both approaches also share some key similarities – particularly in their attempts to examine how and by what means particular stories achieve a certain dominance within a field of knowledge. Following Hemmings’ example then, I too choose to deliberately withdraw from producing an alternative reading of the history of LGBT rights that can then be easily transferred into (potentially abstract) future LGBT concerns. To do so would risk too easily positing a singular (or ‘singular alternative’) narrative of LGBT progression – an actual form for LGBT action that works through sameness and transcendence rather than the repetition of virtual tendencies in each different set of material circumstances. I would suggest that while the arguments that I have put forward about the conditions of knowledge production, the operation of power in relation to LGBT rights and LGBT histories, the spatialisation of rights and the operation of rights as modes of creative connection, can all be profitably applied to (actualised in) matters of public policy, the form of such actualisations will be widely different depending upon circumstances and jurisdictions. Furthermore, such actualisations should not be separated out from the circumstances within which they are enacted. Hemmings highlights the ‘dangers of providing a corrective bibliography’<sup>16</sup> that does nothing to undermine the dominant linear trajectory through which feminist stories have been produced. A similar argument might be applied to the danger of telling a ‘single story’<sup>17</sup> of LGBT rights. Rather than engage in a process that might in any way contribute to the crystallisation of any such ‘correctives’, I would prefer to emphatically withdraw in order to highlight the danger of such corrective moves and leave open the possibility of law’s uncertainty in the face of smooth space and the line of flight into the creative repetition of the future.

However, this approach must proceed with caution; Hickey-Moody and Rasmussen note that,

‘Identities, politics and social visibility are at stake. Not to mention lifestyles and sexual pleasure. It seems almost as if Deleuze and Guattari would have women dump their girlfriends

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<sup>15</sup> Hemmings, “What is a feminist theorist responsible for? Response to Rachel Torr” p73

<sup>16</sup> Hemmings, “Telling Feminist Stories” p119

<sup>17</sup> Chimamanda Adichie, “The danger of a single story” *Speech Delivered at TEDGlobal 2009*  
[http://www.ted.com/talks/chimamanda\\_adichie\\_the\\_danger\\_of\\_a\\_single\\_story.html](http://www.ted.com/talks/chimamanda_adichie_the_danger_of_a_single_story.html) accessed 6/8/12

and fuck chairs outdoors in order to affect a flow in which ‘non human sex mingles with the flowers’<sup>18</sup>

This quote captures a tension that is expressed in various different ways in relation to sexual orientation rights activism. Sexuality and rights form a problematic encounter and at the point of encounter we are faced with two options – that of creatively experimenting with the singularities at play, as unrestricted as possible by the molar narratives and histories within which we are situated, or falling back into the habitual reiteration of particular codes and striations of sexual norms. For a number of reasons, this choice is not clear-cut. Deleuze and Guattari may demand a turning away from identity, but as Braidotti points out – it is much easier to turn away from a subjectivity to which one already has access.<sup>19</sup> Why then, should the marginalised or the decentralised give up what little has been gained in order to plunge into the unknowable pure past? A limited freedom found in registers and languages that are knowable is surely much safer than Deleuze and Guattari’s ‘mad becoming’ or the demand that we make ourselves worthy of the event.

Yet whether or not we are actually presented with this choice, it is clear that an abstract or transcendental discourse of rights cannot survive and be relevant to the demands of the actual. I have suggested that rights are double-sided and explored some of the ways in which this might be the case: they are machines of territorialisation and deterritorialisation, modes of enunciation of power and modes of actualisation of resistance. However, to remain relevant, I would argue that rights must be viewed as immanent tools rather than abstract rules. They can and do act as an expression of law, sociality and perhaps even as a fractured sense of justice, and as such they are actualisations of a much larger virtuality. Accordingly, as actualisations they must be bound, responsive to, and enmeshed within material life: the uneven distribution of the flesh and the unequal subjection to biopower. It is in this mode that rights move, striate, map and direct – towards both order and disorder. Thus we might conclude that although rights have been explored here as dual sided and multi functional, we can tentatively arrive at a unitary assessment of their continued value and use: rights are a means of connection and communication upon and around a particular plane. The task facing the activist, lawyer or actor embedded in the particular material circumstances of the plane is to use encounters, problems and questions to explore how far rights’ capacity for connection can be taken, and to follow this capacity as it becomes the line of flight.

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<sup>18</sup> Anna Hickey-Moody and Mary Lou Ramussen, "The Sexed Subject in-between Deleuze and Butler," in *Deleuze and Queer Theory*, ed. Chrysanthi Nigianni and Merl Storr (Edinburgh: Edinburgh University Press, 2009). p37-8

<sup>19</sup> Braidotti, *Metamorphoses: Towards a Materialist Theory of Becoming*. p64

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